

[30th March 1955]

III.—GOVERNMENT BILL.

THE MADRAS COURT-FEES AND SUITS VALUATION BILL, 1954—*cont.*

Clause 13.

MR. SPEAKER :—“ The motion is—

‘ That clause 13 do stand part of the Bill.’ ”

SRI P. K. GOPALAKRISHNAN :—

‘ In line 6, after the words “ the Court shall ”, insert the words “ not decide ”.’

The amendment was duly seconded.

SRI M. NARAYANA KURUP :—“ Sir, I move the following amendment :—

‘ In line 6, after the words “ the Court shall ” insert the words “ strike off the issue ” and omit the words “ on the issue which necessitates the levy of such additional fee, record a finding against the party in default ”.’ ”

The amendment was duly seconded.

SRI T. C. NARAYANAN NAMBIAR :—“ Sir, I move the following amendment :—

‘ For the words “ on the issue . . . in the case ” substitute the following :—

“ drop the issue which necessitates the levy of such additional fee, and decide the other issues in the case.” ’ ”

The amendment was duly seconded.

SRI M. KALYANASUNDARAM :—“ Sir, I move the following amendment :—

‘ In line 6, after the words “ Council shall ” insert the words “ not decide ” and omit the words “ record a finding against the party in default ”.’ ”

The amendment was duly seconded.

MR. SPEAKER :—“ The clause as well as the amendments are before the House for discussion.”

9-40
a.m.

* SRI M. NARAYANA KURUP :—“ Mr. Speaker, Sir, my amendment is quite in consonance with the gist of the discussion we had yesterday on clause 12. Clause 13 provides . . . ”

MR. SPEAKER :—“ There is too much of noise in the House, I am not able to follow the proceedings.”

* SRI M. NARAYANA KURUP :—“ We see here there is a new departure in raising issues. As was originally pointed out it was the plaintiff's allegation that counted but now the defendants are also given the right at various stages to raise issues and their allegations are also taken into consideration. Take, for example, a case where the plaintiff brings in a suit on oral lease. The defendant frivolously raises the contention of title and an

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issue is framed on title. Now the plaintiff is prepared to substantiate his claim of oral lease or other lease and take the risk of his suit being dismissed if it is found to be otherwise. In the present case if the issue is framed and court-fee is not paid, the court is bound to record a finding adverse to the party. I submit that would be a great hardship to the plaintiff. In such cases if only the court strikes off the issues that puts an end to all trouble. The plaintiff takes the risk if his particular allegation is not proved. Supposing the lease is not proved, the suit will be dismissed straightway because no relief is claimed on title. This is one instance. There may be others also. Therefore it is but just and equitable that instead of recording a finding on the issue for which no court-fee has been paid, the issue is struck off. That is the practice obtaining to-day. Such a provision is more necessary in this Bill because as I said already, there is a violent departure from established convention and old law of giving a right to defendants at various stages to raise issues. It is for the parties who are affected more or less by a finding on the issue to decide whether they take the risk of recording a finding or not. Therefore I submit my amendment is very reasonable which only asks the court to strike off the issue and not record a finding against the party who has not paid the court-fees."

THE HON. SRI C. SUBRAMANIAM:—"I would like to request the House to pass over this clause now. If the amendment suggested by the Hon. Member is accepted, certain consequential amendments would also be necessary in the clauses which we have passed already. I have asked the Law Secretary to have it examined. I shall find out whether it is possible to accept this amendment."

* SRI V. R. KRISHNA AYYAR:—"Mr. Speaker, Sir, I would like to make a submission before the matter is considered fully. I have suggested that the clause might be omitted. Why? Because even after accepting certain amendments which have been suggested by hon. Members on this side as well as on the other side of the House, it is only a case of omitting to record a finding or striking off the issue. But there may be cases where the defendant may also raise questions. Take, for instance, the case cited by the hon. Member Sri Narayana Kurup where the suit is for oral lease. A plea might be put forward on behalf of the defendant that the plaintiff has no title and the oral lease is untrue. In such cases striking off the issue is not possible or feasible because the defendant may say he has not granted it, in fact he cannot grant it and so on. In such cases the court may be compelled under the laws of procedure to go into the question. Strike off is not possible in such cases even if it is a suit for oral lease. Take another case, for instance, a suit for partition. A and B are sons of C. 'D' may come forward and say that the share of 'A' is not correct and 'D' has also a share because he is also the son of 'C'. In such a case the issue is raised at

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the instance of 'D' before the court, and striking off the issue may not satisfy the position. A number of cases may arise in which the defendant may be able to compel the court to go into the issue notwithstanding the fact whether the plaintiff has raised it or not, and says that he does not want the matter to be gone into. Supposing the plaintiff claims half share as his share in the property with another. Another brother might be impleaded and he might put in the plea that the plaintiff is not entitled to half the share of the property. In such a case the court cannot strike off the issue. The court will have to go into the case and then decide. The present procedure is working quite well without this clause which requires the court to record a finding against the party."

THE HON. SRI C. SUBRAMANIAM:—"Sir, I have already requested that this clause might be passed over so that there may be no duplication of work."

MR. SPEAKER:—"The hon. Members of the House can be heard. Whatever amendment the Government want to bring they can bring the amendment after taking into consideration the views expressed by hon. Members."

* SRI S. PANCHAKSHARAM:—"Mr. Speaker, Sir, I submit there is no need for a clause of this type in this Bill because this will unnecessarily give powers to a judge who at times may feel that an additional issue is necessary. Now, necessary court-fees is collected by the court official on the pleadings contained in the plaint and the plaint is passed off by the judicial officer and the suit is numbered. Then the defendant is called upon to defend and he files a written statement. Then only the court is called upon to frame issues. The issues are framed wherever there are actually disputes between the two view points, the case as put by the plaintiff in his plaint and the written statement of the defendant filed before the court. Also, where the position of law has to be tackled, some additional issues may also be necessary."

"Let me illustrate my point. Supposing a plaintiff files a suit for declaration and injunction. Such a case as that is covered by provisions of section 7 (iv) (c). The plaintiff is given the opportunity to value the suit according to section 7 (v) (b) and pay half the amount that he is bound to pay under section 7 (v) (b). When the plaint is numbered and the defendant comes forward with the plea: 'No, no. The plaintiff is not in possession and therefore not entitled to injunction. I am in possession. The plaintiff ought to sue for declaration and possession and not declaration and injunction'. Supposing in such a case the court frames issues and says the plaintiff is not in possession of the suit even before the trial of and without going into the merits of the case, calls upon him to pay the deficit court-fees, it will then be a great hardship."

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“ Take again another case. Section 7 (iv) (a) contains provisions regarding minor suitors who go before the court of law against alienations made by co-parcener managers, etc. The transactions are voidable in many cases. These are not binding on the minors and are void. In such cases where the plaintiff feels that the alienations are not necessarily voidable but are *ab initio* void there can be valuation straightway. But under Section 7 (iv) (a) he has to pay court-fees on the face value of the document. But where the man feels that the document is *ab initio* void and not binding on him he can sue as though he is an ordinary suitor and try to establish his title, under section 7 (v) (b). In such cases, though an issue is framed and the plaintiff is called upon to pay the court-fees on the face value of the document, it may run to several thousands. It will be prejudging the issue and non-suiting the plaintiff. In cases like that, I do not think that this clause is absolutely essential because issues are framed on the pleadings and when necessary reliefs that are to be asked for are not prayed for and court-fee is not paid thereon, the court will certainly refuse to grant those reliefs. When the fee is collected and the plaint is registered, I do not think that any issue framed need be the subject-matter of court-fee.”

9-50
a.m.

Clause 14.

MR. SPEAKER :—“ The motion is—

‘ That clause 14 do stand part of the Bill.’

“ The hon. Member Sri P. K. Gopalakrishnan is not in his place. His amendment is not moved.”

SRI M. NARAYANA KURUP :—“ I move the amendment standing in my name—

‘ In line 8, after the words “ the suit ”, insert the words “ or in a subsequent suit ”.’

The amendment was duly seconded.

SRI V. R. KRISHNA AYYAR :—“ Sir, I move—

‘ Add the following proviso at the end of the clause :—

“ Provided that the plaintiff shall not be precluded from urging the claim or portion of the claim so relinquished in some other suit or proceeding.”’

The amendment was duly seconded.

SRI S. RAMALINGAM :—“ Sir, I move—

‘ Omit “ Provided that . . . relinquished ”.’

The amendment was duly seconded.

MR. SPEAKER :—“ Both the clause and the amendments are now before the House for discussion.”

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* SRI M. NARAYANA KURUP :—“ Sir, my amendment and the amendment moved by the hon. Member Sri V. R. Krishna Ayyar reflect opposite views. Even without Mr. Krishna Ayyar's amendment, the clause, as it stands, says that a person shall not add that portion of the claim which has been relinquished in the suit. This implies that if the law permits, he can claim that in a subsequent suit. I want to make it clear that when once the plaintiff comes to a court claiming a certain relief and relinquishes a certain portion of that relief and confines himself to a particular amount or to a particular portion of the relief, not only in that suit but in the subsequent suit also he should not be allowed to claim that portion of the relief which he has relinquished. Suppose I come to Court claiming Rs. 1,000 and I have paid court-fee only on Rs. 800, relinquishing my claim to Rs. 200. The object of my amendment is that I should not be allowed to claim that Rs. 200 not only in that suit but in the subsequent suit also. The relinquishment must be irrecoverable in any proceeding. That is the purpose of my amendment, but the amendment of Sri V. R. Krishna Ayyar makes it clear that the portion of the relief relinquished may be claimed in a subsequent suit.”

* SRI K. PARTHASARATHY :—“ Mr. Speaker, Sir. The amendment of the hon. Member Sri V. R. Krishna Ayyar has not been circulated to the members. None of us knows what it is.”

MR. SPEAKER :—“ It has already been circulated to the members. Probably the hon. Member was not here when it was circulated.”

* SRI S. PANCHAKSHARAM :—“ Sir, my point is this. If Clause 13 is going to be deleted, then Clause 14 also becomes unnecessary. For another reason also, Clause 14 is unnecessary, because what the Clause says is : ‘ A plaintiff who has been called upon to pay additional fee may relinquish a part of his claim and apply to have the plaint amended so that the fee paid would be adequate for the claim made in the plaint as amended.’ The plaintiff has always got an inherent right to amend the plaint after return. The plaintiff may be called upon to amend the plaint, re-present it and pay additional court-fee. This has been recognised by the various decisions of our High Courts. If Clause 13 is deleted, Clause 14 also has to be deleted. Even if Clause 13 is retained, Clause 14 need not be there, because Courts have recognised the inherent right of the plaintiff to amend the plaint suitably at any stage to bring the suit within the jurisdiction of a particular Court. Therefore, I say that Clause 14 is unnecessary.”

9-56 a.m. SRI S. RAMALINGAM :—“ கனம் சபாநாயகர் அவர்களே, இந்த பிரிவின்படி, ஒரு வழக்கில், வாதி (plaintiff), பிரதிவாதி கோர்ட்டில் சமர்ப்பிக்கக்கூடிய written statement-ன் விளைவாக, அதிகப்படியான Court-fee கட்டவேண்டிய நிலைமை ஏற்பட்டு, அவனால் கட்டுமுடி

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யாமல் போனால், தனது கோரிக்கையை, ஏற்கனவேயே தான் அந்த வழக் கிற்காக செலுத்தியிருக்கிற **Court-fees** க்கு ஏற்ப, குறைத்துக்கொள்ளலாம் என்றிருக்கிறது. அப்படி குறைத்துக்கொள்ளும் கோரிக்கையை, பின்னால் அதே வழக்கில் (**suit**) திரும்பவும் அதற்காக கோர்ட்டு **fees** செலுத்தி, சேர்த்துக்கொள்ள வாதி அனுமதிக்கப்படமாட்டார் என்றும் கூறப்பட்டிருக் கிறது. வாதி மறுபடியும், தான் குறைத்துக்கொண்ட கோரிக்கை சம்பந்த மாக, புதிய வழக்கு போடவேண்டுமென்றால், அதற்காக ஒரு ஆறுமாதகாலம் எடுத்துக்கொள்ளவேண்டி வரும். கோர்ட்டில் முதலில் கோரிக்கையை போட்டுவிட்டு, பிற்பாடு அதை குறைத்துக் கொள்ளுகிறேன் என்று வாதி (**plaintiff**) சொல்லுவதற்கு முக்கிய காரணம், அவனால் அதிகப்படி யான **Court-fees** கட்டுவதற்கு முடியவில்லை, அதற்கு வேண்டிய பணம் அப்போது அவன் கையில் இல்லை என்பதாகத்தான் இருக்க முடியும். ஆகவே, அவன் கையில் பின்னால் பணம் கிடைத்தவுடன், **Court-fees** கட்டுகிறேன் என்று சொல்லும்போது, முதலில் குறைத்துக்கொண்ட கோரிக்கையையும் சேர்த்துக்கொண்டு, அவன் விவாதிப்பதற்கு ஏன் தடையிருக்க வேண்டும். சட்ட பூர்வமாக வாதியை ஏன் தடுக்கவேண்டும்? வாதிக்கு அப்படிப்பட்ட தடை விதிக்கப்படக்கூடாது என்பதுதான் என்னுடைய திருத் தத்தின் நோக்கம்.

“அடுத்தபடியாக, நண்பர் குரூப், வாதி பணம் இல்லாத காரணத்தி னால், தனது கோரிக்கையை குறைத்துக்கொள்ளவேண்டுமென்று பிரியப் பட்டால், நிரந்தரமாகவே அந்த குறைத்துக்கொண்ட கோரிக்கைக்கு முழுக் குப் போட்டுவிடவேண்டும் என்று சொல்லுகிறார். அது சரியல்ல. ஆகவே, அவர் கொண்டுவந்திருக்கும் திருத்தத்தை நான் ஆட்சேபிக்கிறேன்.”

* SRI N. GOPALA MENON :—“ Sir, I think that the analogy or the illustration which the hon. Member Sri M. Nara yana Kurup gave relates only to a money claim. When a person asks for a certain relief and relinquishes a portion of that, he cannot afterwards add to the claim the portion so relinquished. But there may be cases where you tack on to a money claim suits for damages, a question relating to easement, viz., a right to allow rain water to fall on your neighbour's compound, etc. What the clause contemplates is”

THE HON. SRI C. SUBRAMANIAM :—“ Sir, Order II, rule 2, Civil Procedure Code, will apply to all these cases. There is absolutely no necessity to make a provision as the hon. Member Sri Narayana Kurup wants or as Sri V. R. Krishna Ayyar wants. We will be governed by the Civil Procedure Code. This only relates to the payment of court-fee. So, from that point of view, the hon. Member Sri Gopala Menon would agree that none of these things is necessary.”

* SRI N. GOPALA MENON :—“ Sir, I think that this is much more comprehensive than Order II, rule 2, Civil Procedure Code, which says that once you relinquish a portion of a claim, you cannot claim it again. Here what is stated is that the plaintiff shall not be permitted at any later stage of the suit to add to the claim the part so relinquished. This contains a salutary principle that the decision of an issue shall not be dependant upon the purse of the defendant, that is, whether he is able to pay the court-fee or not. It says that when the suit is commenced and issues are framed, if the defendant does not pay the money, he cannot

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withdraw a portion of the claim and later on after evidence is taken and the suit is about to be closed, come forward at that stage and say ' Now I have got the necessary funds in my hands. I will pay the court-fee. Please try this issue also '. The stage of the suit ends with the decision in the suit. At any later stage of the suit it is not open to the defendant to come forward and say that he would pay the requisite amount and have the right to say that the other issue must be tried. I think that this section applies not only to money claims. There may be other claims tacked on to money claims."

10 a.m. * SRI M. NARAYANA KURUP :—" My hon. Friend is explaining. Hence it is mentioned only as a ' Claim '. It does relate to a money claim. What is stated here is not ' relief '. Claim means when we include two or three reliefs, we may relinquish any one of the reliefs. Regarding this clause, if you omit the words ' provided that the plaintiff shall not be permitted at any later stage of the suit to add to the claim the part so relinquished ', it will give a go-bye to Order II, rule 2 of the Civil Procedure Code. It will also enable the defendant to come forward and pay the court-fee and ask the court to decide the case, which I think is not at all a principle of jurisprudence to which any body could subscribe."

* SRI P. RANGASWAMY REDDIAR :—" Mr. Speaker, Sir, the scope of Order II, rule 2 of the Civil Procedure Code and the scope of the proviso in clause 14 are totally different. Under Order II, rule 2, if a person fails to sue for all the reliefs arising under the same cause of action, a subsequent suit is barred. But this proviso aims at preventing persons who deliberately omits or relinquishes a portion of the claim, from subsequently turning round and claiming the omitted or relinquished portion. That is the scope of the proviso. I shall give instances"

THE HON. SRI C. SUBRAMANIAM :—" Not necessary, I fully understand that."

SRI T. C. NARAYANAN NAMBIAR :—" Sir, I am supporting the argument of Sri Gopala Menon as also the amendment moved by Sri Krishna Ayyar. (The Hon. Finance Minister : ' That can be done by a non-lawyer only. ') The opinion expressed by the Hon. Finance Minister that supporting both the above things can be done only by a member who is not a lawyer is also correct. In my humble opinion, I view these things from a layman's point of view and also I see how these clauses will affect the interests of the vast majority of the people in this land. Poor people could not go to the court for the simple reason that they have no money to pay the court-fees. But the claim itself cannot be relinquished for ever. At the same time I support Sri Gopala Menon also. For, once a case is filed and the plaintiff has relinquished claim on a portion, just two or three months before

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the conclusion of the case, he cannot come and say, 'I have got a lottery or I have some money; therefore the court shall include that claim also'. That will inconvenience the court and also it is not good. At the same time the claim itself cannot be relinquished for ever. Sri Krishna Ayyar's amendment only says that in some other suit the plaintiff should not be precluded from urging the claim relinquished in one suit. Therefore, I support Sri Gopala Menon in that the plaintiff should not be allowed to urge the claim once relinquished in a particular suit, but at the same time I support Sri Krishna Ayyar's amendment in that such relinquishment should not preclude him from urging the claim in any other suit."

* SRI K. PARTHASARATHY :—" Mr. Speaker, Sir, I submit that the clause as it stands is all right and therefore I oppose the amendments of the hon. Members, Mr. Kurup, Mr. Ramalingam and Mr. Krishna Ayyar. I submit that if the plaintiff for any reason is not able to pay and relinquishes a claim, it is but right that he should not be permitted to pay court-fee again and include the claim that was relinquished in the same suit. That is the position. Should he be prevented from including the claim relinquished, in a further suit? That is the question. My submission is that it should not be provided for in this enactment. This legislation is with reference to court-fees and suits valuation and here we need not confer any right on the plaintiff to file a suit subsequently on the claim relinquished voluntarily in a previous suit. My submission is that the proviso that is suggested by Mr. Krishna Ayyar is not necessary, because it is not the Procedural Law that we are dealing with. If under the Civil Procedure Code, one is entitled to file a suit, that should not be taken away; I therefore oppose the amendments."

* SRI V. R. NAGARAJAN :—" Sir, though one may have sympathy for hon. Members in the Opposition, I fear it may not be legally possible to accept the amendments having regard to certain fundamental provisions in the Civil Procedure Code. As has been rightly pointed out by Mr. Gopala Menon and others, Order II, rule 2 is one of the substantial sections which cannot be undermined by any legislation on court-fees; we can seek to follow the Civil Procedure Code as the main guiding statute for civil codes. If a suitor comes whether in regard to money claims or certain rights, he can claim all together, unless he wants by asking the court to be permitted to withdraw the suit itself. That is a different matter altogether. Therefore, I submit that it will be very difficult to concede the demands of the hon. Members in the Opposition and that the clause as it stands is quite all right."

SRI E. L. RAGHAVA MUDALIAR :—" Mr. Speaker, Sir, many of my lawyer friends have pointed out that this portion is covered by the Civil Procedure Code. Order II, rule 2, embodies a salutary principle, namely, multiplicity of suits must be avoided;

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it provides as to what *should* be included, what all claims *may be* included and this matter is covered by the conditions for amendment of pleadings based on the rule of prejudice, whereby every party prejudiced can be amply compensated by payment of costs and other things. So instead of amending this clause, it is better to leave it as it is. Otherwise, it would trespass on the original Civil Procedure Code."

* SRI V. R. KRISHNA AYYAR:—"Mr. Speaker, my endeavour is that we must make the whole position clear and not leave any room for doubt. As it is, clause 14 says: 'A plaintiff who has been called upon to pay additional fee may relinquish a part of his claim.' So it is open to the plaintiff or a man within the jurisdiction of the court, if the court finds that the fee is higher, can relinquish certain claims. Further, it is stated, 'provided that the plaintiff shall not be permitted at any later stage of the suit to add to the claim the part so relinquished.' Lest it should be construed as a bar for bringing in a suit later on, I am adding a proviso, namely, 'Provided that the plaintiff shall not be precluded from urging the claim or portion of the claim so relinquished in some other suit or proceeding.' We need not confuse Order II, rule 2 here. We are seeking to provide that in respect of claims or a portion of claim, there should be no bar for a fresh suit. The expression 'claim' used in the Court Fees Act is wider than the word 'claim' used in Order II, rule 2. Here the word 'claim' comprehends cause of action and reliefs available under a cause of action. Therefore, it will be wider than the expression 'claim' used in the Civil Procedure Code in Order II, rule 2. If really under Order II, rule 2 of the Civil Procedure Code a man can bring a suit in respect of any portion which he has omitted, then clause 14 should not stand in the way. He must be able to bring a suit afresh if he has not agitated something in the same suit. What I would commend to the Hon. Finance Minister for consideration is this. If the Civil Procedure Code allows in certain circumstances bringing a fresh suit in respect of an abandoned relief, that right should not be taken away by clause 14. If he has no right under the Civil Procedure Code to bring a suit in respect of any portion which he has abandoned, then clause 14 or any provision in the Court Fees Act is not going to help him. Apart from Order II, rule 2, by which a man is barred under certain circumstances and is not precluded under certain other circumstances to bring a fresh suit, the Court Fees Act should not be used to preclude a man bringing a suit where he has abandoned a certain claim for the time being because his purse did not permit. A common sense point of view has been put forward by my hon. Friend Sri Narayanan Nambiar that if a man abandons a claim for want of funds, he need not be precluded from agitating the same question again, provided the procedural law allows it. If Clause 14 can be deleted altogether, we are relegating to the procedure under Order II, rule 2. There is no harm in it. But if Clause 14 is to be retained, it must be made very clear lest there should be any contest

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or complication. That is why I have moved an amendment to the effect that the plaintiff should not be precluded from urging the claim or portion of the claim so relinquished in some other suit or proceeding."

THE HON. SRI C. SUBRAMANIAM :—" The necessity for clause 14 is this. Here we are providing that a party can be called upon to pay court-fee at a later stage when issues are raised. In case the plaintiff does not want to pay additional court-fee and wants to restrict the claim to a certain aspect alone, then it should be possible for him to amend the plaint, so that his claim may be restricted to that extent alone. Hon. Members said that there is provision in the Civil Procedure Code for the purpose of amending plaints. But there is a discretionary power vested in the court and a court can refuse permission to amend the plaint. But under clause 14 when a person is called upon to pay additional court-fee he is given the right to have the plaint amended so that the fee paid would be adequate for the claim made in the plaint as amended.

" With reference to the amendments of Sri Narayana Kurup and Sri V. R. Krishna Ayyar, clause 14 restricts the plaintiff from adding to the claim the part he relinquished in that particular suit. With reference to other suits, whether a suit can be filed or cannot be filed, they are governed by Order II, rule 2. We need not make any provision here. Unless we used the words ' or in a subsequent suit ', we are not barring anything under this clause. We are speaking with reference to that particular suit alone. We need not make provision for subsequent suits. I am sure therefore that Sri V. R. Krishna Ayyar would agree that his amendment is redundant. It is quite unnecessary. It looks as if we were overriding Order II, rule 2. As far as clause 14 is concerned, it does not relate to any subsequent suits at all which will be governed only by Order II, rule 2.

" I am unable to agree with Sri Narayana Kurup also because it should be left to the discretion of the Court to find out whether a subsequent suit will lie or will not lie. We need not bar it altogether. Under these circumstances, these two amendments are unnecessary. I have already explained the necessity for clause 14 which gives a right to the person to have the plaint amended and it is not left to the discretion of the Court to amend it or not."

* **SRI M. NARAYANA KURUP** :—" Sir, of course certain suggestions have been made from commonsense point of view. We know law is not always commonsense. We say a suit on a money claim must be brought within three years. What is the justification for saying that it should not be brought one day afterwards? Therefore, it is not always commonsense that is taken into consideration. Here we are concerned with law and interpretation of law. The hon. Member Sri Gopala Menon's argument does not apply to this case.

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“ There seems to be a misunderstanding about the implication of Order II, rule 2. Order II, rule 2, involves what is called constructive *res judicata*, i.e., it applies to things which a plaintiff does not bring to Court and which he ought to have brought to Court. But here he has certain claims before the Court and he wants to withdraw certain portion of his claim. Therefore, application of Order II, rule 2, is entirely different from what is stated in Clause 14. That is why I have brought my amendment.”

* SRI S. PANCHAKSHARAM :—“ Under Clause 12, a provision is made that if the plaint be not amended or if the deficit fee be not paid within the time allowed, the plaint shall be rejected and the Court shall pass such order as it deems just regarding the costs of the suit. Clause 14 is a corollary to Clause 13. Consideration of clause 13 was sought to be postponed to a later time. The necessity or otherwise for Clause 14 may arise only after the necessity for Clause 13 and the amendments to Clause 13 are considered at a later time. Therefore, the consideration of Clause 14 may also be postponed till such time when Clause 13 will be discussed and voted in the House. Therefore, I would request the Hon. Finance Minister to have this clause also postponed along with clause 13.”

THE HON. SRI C. SUBRAMANIAM :—“ It is not necessary.”

* SRI S. PANCHAKSHARAM :—“ I would like to mention one other point also. The Hon. Finance Minister seems to think that the plaintiff cannot amend the plaint when it is returned to him for necessary amendments or when he is called upon to pay deficit court-fee as decided by the Court. In such cases what happens is this. When an additional issue is framed and the Court calls upon the party to pay additional court-fee, the plaintiff is always entitled not only under natural principles of justice but also under several decisions of our High Court to restrict or limit his claim to whatever he thinks is necessary. Therefore, there is no necessity for this clause. If Clause 13 is postponed, consideration of clause 14 may also be postponed to a later time.”

10-20
a.m.

* SRI V. R. KRISHNA AYYAR :—“ Sir, regarding common-sense being brought to bear upon these things, we certainly endeavour to make law, as far as possible, agreeable to common-sense. Law, it has been said, is an ass. But we need not multiply it by creating more asses. Let us try to make the law accord with sense.

“ So far as Order II, rule 2, is concerned, the plaintiff has the absolute right to relinquish. But it may be said that his absolute right to relinquish a portion of his claim is to bring the suit within the jurisdiction of any Court. Supposing the value is found to be more than Rs. 3,000, he can always relinquish. No Court can have any discretion in refusing to allow the plaintiff to relinquish. But the only point that may be said in justification of the existing clause is that the relief is available only where he wants to relinquish

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a portion of the claim for the purpose of bringing it within the jurisdiction of the court and not in other cases where he wants to escape court-fee. Even in respect of the latter case, he has the right.

“ Regarding my own amendment, after hearing the Hon. the Finance Minister, I also agree that the clause as it is contemplates only bar of the claim being re-agitated in the course of the same litigation and not in a fresh suit. But oftentimes we find complications coming up and then there are misinterpretations. To make it foolproof, I suggest that there may be an amendment which would make it clear that subsequent suits will not be barred on account of this. If the Government think that it is not necessary, I leave it at that.”

THE HON. SRI C. SUBRAMANIAM:—“ When it is to be dealt with by Judges, High Court Judges and Supreme Court Judges, it need not be foolproof. We need not think that there would be fools on the Benches.”

The amendment of Sri S. Ramalingam was deemed to have been withdrawn as he was not in his seat.

The amendment of Sri M. Narayana Kurup was, by leave, withdrawn.

The amendment of Sri V. R. Krishna Ayyar was, by leave, withdrawn.

Clause 14 was put and carried.

Clause 15.

MR. SPEAKER:—“ The motion is—

‘ That clause 15 do stand part of the Bill.’ ”

* SRI N. MOUNAGURUSWAMI:—“ Sir, clause 15 relates to fees payable on written statements. It is wrong to compel a party who has been dragged to the court to pay court-fee. It may be that he has a very good claim against the plaintiff himself. For illustration, we can take the case of a suit on accounts. ‘ A ’ files a suit for a recovery of Rs. 1,000 against ‘ B ’. ‘ B ’ may claim that Rs. 10,000 is due from ‘ A ’ himself. In fact, the amount may be really due to him. In that case, clause 15 compels ‘ B ’ to pay court-fee on Rs. 10,000. If that fee is not paid, his claim will not be looked into and his case will not be heard. Then, Order II, rule 2, will come into effect and it might be considered as *res judicata* in a further claim by him against ‘ A ’. Therefore, we will be practically preventing him from making a claim in respect of an amount really due to him. My submission is that it is not fair to insist on a defendant to pay court-fee on his written statement.”

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* SRI S. PANCHAKSHARAM :—“ Sir, clause 15 reads—

‘ Where fee is payable under this Act on a written statement filed by a defendant, the provisions of section 12 shall apply to the determination and levy of the fee payable on such written statement, the defendant concerned being regarded for the said purpose as the plaintiff and the plaintiff or the co-defendant or the third party against whom the claim is made being regarded as the defendant.’

I submit that there is no need for this clause at all. The defendant is called upon, where he makes a counter-claim or where he pleads a set off, to pay court-fee. Those are the only two occasions where a defendant can be called upon to pay court-fee. Provision is made for such cases in Clause 8. Clause 8 says that a written statement pleading a set off or counter-claim shall be chargeable with fee in the same manner as a plaint. Therefore, rules relating to evaluation apply *mutatis mutandis* to written statements pleading a set off or counter-claim. In the presence of Clause 8, there is absolutely no necessity for Clause 15 at all. It is only redundant. Therefore, I request the Hon. the Finance Minister to remove clause 15.”

THE HON. SRI C. SUBRAMANIAM :—“ I do not think there can be any difficulty in retaining this provision. To be on the safe side, I would like to have it.”

* SRI V. R. KRISHNA AYYAR :—“ I would also like to point out that clause 37 makes it clear that under certain circumstances, the defendant, even where he does not plead a set off or counter-claim, may have to pay court-fee such as when he claims part of the share in a suit for partition or when he applies to declare a decree not binding on him. If in such cases the plaintiff has to go through all the ordeals of review, the defendant has to share the lot.”

THE HON. SRI C. SUBRAMANIAM :—“ The clause is necessary, Sir.”

Clause 15 was put and carried.

Clause 16.

MR. SPEAKER :—“ The motion is—

‘ That clause 16 do stand part of the Bill.’ ”

* SRI S. PANCHAKSHARAM :—“ Sir, I move the following amendment :—

‘ For “ the provisions of sections 10 to 14 ”, substitute “ the foregoing provisions ”.’ ”

SRI A. RAMASAMY TEVAR :—“ I second the amendment.”

* SRI S. PANCHAKSHARAM :—“ This is only a verbal amendment. Some other provisions are also concerned in this matter. Therefore, instead of saying ‘ the provisions of sections 10 to 14 ’, I suggest that the words ‘ the foregoing provisions ’ may be used.”

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THE HON. SRI C. SUBRAMANIAM :—" I am quite certain that Clauses 10 to 14 relate to this provision. I do not think I should make a general provision like ' the foregoing provisions '."

The amendment was, by leave, withdrawn.

Clause 16 was put and carried.

Clause 13.

THE HON. SRI C. SUBRAMANIAM :—" I suggest, Sir, that Clause 13 may be taken up now."

MR. SPEAKER :—" Yes."

THE HON. SRI C. SUBRAMANIAM :—" Sir, I am accepting the amendment of the hon. Member Sri Narayana Kurup."

SRI S. RAMALINGAM :—" என்னுடைய திருத்தத்தையும் ஏற்றுக் கொள்ளக்கூடாதா ? "

THE HON. SRI C. SUBRAMANIAM :—" It is not a question of favouring anybody. It is a question of making proper amendments."

The amendment of Sri P. K. Gopalakrishnan was, by leave, withdrawn.

The amendment of Sri Kalyanasundaram was, by leave, withdrawn.

SRI T. C. NARAYANAN NAMBIAR :—" Apart from the recognition of right, I want, as in the proverbial story, to see that the child is saved. My purpose is served. I beg leave to withdraw my amendment."

The amendment of Sri T. C. Narayanan Nambiar was, by leave, withdrawn.

MR. SPEAKER :—" The question is—

' In line 6, after the words " the Court shall ", insert the words " strike off the issue " and omit the words " on the issue which necessitates the levy of such additional fee, record a finding against the party in default " . ' "

The amendment was put and carried.

Clause 13, as amended, was put and carried.

Clause 17.

* SRI S. PANCHAKSHARAM :—" I do not propose to move my amendment." 10-30 a.m.

* SRI V. R. KRISHNA AYYAR :—" Sir, I only want to speak on this clause. The clause reads—

' The provisions of sections 10 to 14 shall apply *mutatis mutandis* to the determination and levy of fee in respect of petitions, applications and other proceedings in courts in the same way as they apply to the determination and levy of fee on plants in suits. '

" Sir, usually the fee is of the order of twelve annas and less.

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THE HON. SRI C. SUBRAMANIAM :—" Not necessarily."

* SRI V. R. KRISHNA AYYAR :—" In respect of petitions, it is usually twelve annas. Sometimes it is less or rarely it may be more. So much so, the subject-matter of dispute may be whether it should be twelve annas or it should be less and there may be review and re-review and so on. I suppose the sum of twelve annas is not at stake so much as the engagement of a lawyer and payment of fees to him to decide the issue, which means a heavy expenditure. I feel there need be no review in cases where the fee is twelve annas and two annas. There must be some limit to the application of the principle underlying the clauses 10 to 14. The application of these provisions to petitions and applications will be far more penal in consequence than otherwise. I would tell the Government that the matter is so flimsy."

THE HON. SRI C. SUBRAMANIAM :—" They need not necessarily be interlocutory applications. There may be original petitions, claim petitions and execution petitions and if issues arise in such cases, we should indicate what are the rates of fees that should be charged. Of course in ordinary cases it does not matter much. But in the case of original applications, it is absolutely necessary that we prescribe the procedure for determining the fee."

* SRI V. R. KRISHNA AYYAR :—" Even in the case of original petitions, I do not know whether more than twelve annas is collected. Only when it is converted into a suit, court-fee on the value of the suit is collected."

THE HON. SRI C. SUBRAMANIAM :—" Sir, let us take for example a succession certificate. Though on the petition a stamp of a particular value is affixed, yet the fee is governed by various other provisions. I can give many other instances like this."

MR. SPEAKER :—" I think a regular conversation is going on. I shall put clause 17 to vote."

Clause 17 was put and carried.

Clause 18.

SRI S. PANCHAKSHARAM :—" Sir, I move—

'In lines 3 to 6, for "the correctness . . . in such courts", substitute "the court-fee paid or the sufficiency thereof".'

The amendment was duly seconded.

SRI M. NARAYANA KURUP :—" Sir, I move—

'(1) In sub-clause (2), omit the words "and for the avoidance of doubt . . . by the court on the same question".'

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“(2) After sub-clause (2), insert the following proviso :—

“Provided that the issue once raised and decided by the court shall not be reopened in the same suit”.”

The amendments were duly seconded.

SRI V. R. KRISHNA AYYAR :—“ Sir, I move—

“For the words “and for the avoidance of doubt . . . on the same question” occurring in sub-clause (2), substitute the following :—

“but it shall not be lawful for the court to review an earlier decision given by the court on the same question after giving notice to the State Government as provided in section 20”.”

The amendment was duly seconded.

* SRI S. PANCHAKSHARAM :—“ Sir, the clause says that court-fee examiners will examine the correctness of representations to and orders passed by courts on questions relating to valuation of subject-matter and sufficiency of fee in respect of proceedings in such courts. I say the words ‘correctness of representations, etc.’, be substituted by the words ‘that the examiner will examine the court-fee paid or the sufficiency thereof’. I do not think that the court-fee examiner has the right to go into the representations made to the court at the time of filing of the plaint. The courts also cannot say ‘these were the representations made to us’. His duty is to see whether the court-fee paid is correct and sufficient. If his duties are restricted to this purpose, it will be enough. He need not go into the correctness of the representations made, etc.”

* SRI V. R. KRISHNA AYYAR :—“ Sir, what I have suggested in my amendment is that once a matter has been decided by the court and particularly where a matter has been decided after hearing the Government Pleader as provided under clause 20—which deals with notice being given to the State Government—it must be deemed to have been decided finally and not available for reopening at the instance of the court-fee examiner. Strictly speaking, it will be stultifying the work of courts if they are called upon to reconsider a matter which they themselves have already decided, half a dozen times, each time the decision varying from the previous one. We will be only bringing the courts into contempt against themselves. Once a decision has been given by a court, it should stop there. Simply because somebody else says something else, the same court should not be asked to reconsider its decision. Of course, the State’s coffers should be protected. There is a provision in Clause 20 which says :

“In any inquiry relating to the fee payable on a plaint . . . the court may . . . give notice to the State Government; and where such notice is given, the State Government shall be deemed to be a party to the suit or other proceeding as respects the determination of the question or questions aforesaid . . .”

So, we must presume that the State’s interests are protected once the court hears the Government Pleader. At this stage, it must

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be deemed to be final. It must not be open thereafter to the Court-fee Examiner to look into the representations made and review the whole thing. When it is said that notice shall be given to the State Government, it means that the Government Pleader will be heard. The Court cannot simply be asked to go into the question over and over again. It will be asking the Court to come to different conclusions at different times. Once the Government have been heard and a decision taken, it must be considered a satisfactory decision and there should be no reopening of that decision."

* SRI K. P. KUTTIKRISHNAN NAIR :—" Sir, strictly speaking, Mr. Krishna Ayyar's amendment cannot be classified as amendment at all since it goes against the principle of the clause itself."

* SRI M. NARAYANA KURUP :—" Sir, this is a very extraordinary provision. Even according to the law now under discussion, the determination of court-fee is a very complicated matter and it will lead to protracted proceedings in courts. Take for instance the issue of court-fees. It is decided by the first court. Then the issue is taken in appeal. Then it is decided by the High Court. In cases like partition suits, we have known they have dragged on for ten or twelve years. Preliminary decrees are passed. Final decrees are passed. Proceedings are kept pending even at that stage. Then an officer—court-fee examiner—appointed by the High Court comes and reviews the whole thing. That means he is sitting in judgment over what the High Court itself has said. That is why I say it is a very extraordinary thing. He is perfectly entitled to point out any defects in cases which have not been subject to decisions by courts but once the question of fee has been decided by the courts it is not proper or graceful if the court-fee examiner should sit in judgment over their decisions which may include decisions by the High Court also. There must be a finality of things and there must be a finality with reference to the question of court-fee also. If at all it is raised it must be raised within a certain period. We have provided that in the case of defendants, they must raise it before the merits of the case are gone into. Similarly if it were to be raised by the court-fee examiners also, it must be done within a prescribed time-limit. I have not fixed the time limit. When a specific issue has been decided by the concerned Judges, that judgment should be final and the Ministerial Officer should not be asked to sit in judgment over the decision of the Judge. He should not submit any other computation of court-fee and then ask the Judge to make a decision on the same. That is the purport of my amendment."

* SRI N. GOPALA MENON :—" What has now been suggested is an extremely reasonable amendment and I do hope the Hon. Minister for Law will be persuaded to see the reasonableness of it and accept the same. After all in these matters we want finality. Even in law courts where we get justice, we want a

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finality in matters and once a matter has been adjudicated upon and the Judge has decided the exact court-fee that is leviable, it is rather odd that a court-fee examiner should examine it and then put up the matter again before the court, even though it might be after the lapse of several years and even if the matter is in the stage of execution proceedings. That means that the litigant is not completely free even after he comes out of the court. If the court-fee examiner thinks that some more court-fees ought to have been paid, then the litigant has got again to appear in court. That means endless trouble for the litigants. It is extremely reasonable to say that there must be some finality to this. Therefore I would suggest that this amendment may be accepted."

* SRI V. R. KRISHNA AYYAR :—" Sri M. Narayana Kurup's amendment is more drastic than mine. I am willing to support his amendment of course. From what we have heard from different sections of the House, one thing is clear and that is that there should be some finality about these things. We cannot allow these things to go on endlessly. Once the matter is decided by a Judge, then the matter should be allowed to rest, so that the parties may abide by the judgment. Again the judgment should not be allowed to be revised by the fresh computation by the court-fee examiner of the court-fee to be paid. My suggestion is that Mr. Narayana Kurup's amendment may be accepted, in preference to mine, if my amendment is not accepted. But even if Mr. Kurup's amendment is not accepted, then the Government can hardly have any excuse to defend their case. Surely we must have a finality and I do hope that they would see the reasonableness of Mr. Kurup's amendment and accept the same."

THE HON. SRI C. SUBRAMANIAM :—" The system of court-fee examiners is not new. It is in vogue even now. The fixation of court-fee is a complicated and technical one. It is not as if every Judge and every lawyer is thoroughly acquainted with this. (An hon. Member : 'There are Government pleaders.') But even Government pleaders are just like that. They are not abnormal human beings to know everything. This system of law, I mean the law relating to court-fees, is one in which nobody is an expert. That is why the High Court has appointed as court-fee examiners persons who are very well experienced in this line. These court-fee examiners are assisted by adequate staff and they periodically visit all the courts in the State, at least once a year. They go into the facts of the case, compute the court-fee to be paid and then submit a report to the concerned court. The court goes into the report, gives notice to the concerned parties and also to the Government Pleader, hears both sides and then gives its final decision. That is the procedure that is in vogue now. I want that procedure to be continued. That is all."

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SRI N. GOPALA MENON :—" If it refers to 'suits', then it is all right. But here it is said even in 'proceedings', the same will hold good. That means even in execution proceedings, the same rule will apply."

* SRI V. R. KRISHNA AYYAR :—" I cannot accept what the Hon. Minister has said. Under the present practice, as far as I know and as far as my experience as a lawyer goes, if once the matter has been decided by a court, then the court-fee examiner has no authority to submit to the court any other claim for enhancement of the court-fee paid."

THE HON. SRI C. SUBRAMANIAM :—" I am quite aware of the procedure and I have done it myself in some cases. If the court has given its decision and if the court-fee examiner after examination of all the facts of the case by himself submits any other report for revision of the court-fee, then the court hears the concerned parties and the Government Pleader and then comes to a final decision. I want to make things clear. The court-fee examiner goes into the facts of the case and he examines the correctness of the court-fee prescribed. A question arises as to whether the court-fee examiner should confine himself only with the records available so far as the particular case is concerned or whether he can go beyond the records available and compute the court-fee. Suppose there has been a change of property. Suppose the court-fee examiner finds that the value of the property previously calculated was wrong and that based on the present market value, an enhanced court-fee ought to have been paid, then the question arises whether the court-fee examiner can go beyond the records of the case and submit fresh facts to the court. My respectful submission is that once the court-fee examiner is put on the job, it is but proper that in order to come to a correct conclusion, he should go into all the facts. That is why we want to have a comprehensive provision. That is why we want the court-fee examiner to go into all the facts. Otherwise it may be said that the court-fee examiner is not entitled to examine the correctness of the court's decision. That is why we have now said that the court-fee examiner will examine all the facts and then will submit a report to the court, after examining which and after hearing the concerned parties and the Government Pleader, the court would come to a final decision. In view of the technicalities involved in the matter of computation of the correct court-fee in each and every case (in the High Court, a separate staff is there which fixes the court-fee in each case), I think it is better to follow the present procedure. It is not as if all Judges are experts in this system of law relating to court-fees. The court-fee examiner is an experienced officer and if after going into all the facts of the case he submits a report for some revision of the court-fees paid and if the Judge after receiving the report, hears the concerned parties and the Government Pleader, and then pronounces his final judgment, I do not think anybody could object to that procedure. In fact that is the procedure that is now

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being followed and that is what we want to continue under this Bill also. As I said, in the High Court, a separate staff is there which works out the correct court-fee to be paid in each case. Such facilities are not there in mufassal courts. The court-fee examiner periodically visits once a year the mufassal courts and after going into the facts of each case, submits his report to the concerned court and the concerned court after receiving his report and after hearing the concerned parties and the Government Pleader gives its final judgment. Therefore I do not think we can object to the present procedure."

* SRI V. R. KRISHNA AYYAR :—" By way of clarification, I want to ask the Hon. Minister one thing. I am rather surprised to find that I am contradicted by the Hon. Minister in what I have stated, viz., that once the matter has been settled by the court, then the court-fee examiner has no authority to re-examine the issue. Suppose the investigating authorities have reckoned the income of a person as a particular amount. Suppose the court-fee examiner finds that that amount is not the actual income and that only a certain amount of income has been culled down, then has he got such powers to refix the amount that has been recorded in the court's proceedings? "

THE HON. SRI C. SUBRAMANIAM :—" Once we give him the power, he will find out the correct figure from the advice of the Collector and the revenue authorities. With regard to what the hon. Member has said, I may tell him that I have got the opinion of one who has sat on the bench as a District Munsif and has decided many cases. He informs me that there have been cases wherein the court-fee examiner has recommended for certain revision of court-fees and the same has been heard again in the court and then decisions have been given finally."

SRI N. GOPALA MENON :—" Suppose a decree has been passed and there are execution proceedings."

THE HON. SRI C. SUBRAMANIAM :—" Once the suit is closed, it is not again looked into. Only in the case of pending suits, it is being looked into."

SRI M. NARAYANA KURUP :—" With reference to which proceedings, Sir? "

THE HON. SRI C. SUBRAMANIAM :—" Sir, it is with reference to the proceedings where court-fee has been paid."

10-50
a.m.

* SRI M. NARAYANA KURUP :—" Sir, in partition suits even defendants may be liable to pay court-fees in certain cases. A preliminary decree may be passed but the final decree may not have been passed. In such cases, if the parties are asked to pay additional court-fee at a late stage, there will be difficulty."

THE HON. SRI C. SUBRAMANIAM :—" They may pay the court-fee even in the beginning."

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* SRI M. NARAYANA KURUP :—“ Sir, of course the court-fee examiners are there to receive representations and consider certain matters. Even when a court comes to a particular decision, the court-fee examiners can still look into the matter. As has been pointed out by some hon. Member, there must be some finality in regard to the payment of court-fee. Especially in partition suits, there will be difficulty and so many things may happen, and some of them may drag on for 12, 15 and even 20 years. If in the last stages, the parties concerned are required to pay additional court-fee, there will be trouble and confusion.”

THE HON. SRI C. SUBRAMANIAM :—“ Sir, even in respect of partition suits to which the hon. Member made a reference, I may say that before a final decree is passed, the court can re-open the question of payment of court-fee. No doubt, the court-fee examiner comes into the picture. He is only going to scrutinize the papers and see whether the proper court-fee has been paid or not. I do not think that this will lead to the dragging of proceedings in courts for a long time. That being the case, there need not be any objection to this provision.”

* SRI M. NARAYANA KURUP :—“ Sir, will the Hon. the Minister be prepared to assure us that the court-fee examiners will inspect the courts every year? As a matter of fact, they visit the courts once in two years and even at longer intervals.”

THE HON. SRI C. SUBRAMANIAM :—“ Sir, their visit may not be every year. But it may be every 15 months. We have also increased the staff. So, there is no question of their visiting the courts once in two years or three years.”

* SRI S. PANCHAKSHARAM :—“ Sir, I do not know whether the Hon. Minister will be prepared to accept my amendment. I do not dispute the necessity for court-fee examiners, because they are the watch dogs of the State's finances. But the point that requires clarification is this. Once an issue has been framed and the court also gives its judgment on that issue, will the court-fee examiner go into the question and scrutinize the papers and do all these things? After the court pronounced its judgment, if there is to be an appeal, it has to be preferred in an appellate court. That is the method to be adopted. What is the wording that we find here? Clause 18 states that the court-fee examiners are ‘to inspect the records of subordinate courts with a view to examine the correctness of representations made to, and orders passed by courts . . .’. Sir, ‘orders passed by courts’ may even mean the order passed by a court at the time of registering the plaint itself. When the plaint is filed, the court says that the proper court-fee has been paid and it may be registered. This is also an order. But it is an administrative order. But, when an issue is framed and an order on that issue is pronounced by the court, it becomes a judgment and will be incorporated with the judgment

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on other issues involved in a particular suit. Are the court-fee examiners to examine the administrative orders passed by the courts as well as their judgment? This has to be made clear. Otherwise there will be difficulty. I have moved my amendment only to make this point clear."

THE HON. SRI C. SUBRAMANIAM :—" Sir, I do not think the amendment is necessary. As a matter of fact, the present provisions in the clause cover every case. But for this provision, once a matter is decided by a court on a particular issue, it would not be possible to review it or reopen it. It should be possible for the court-fee examiner to examine every aspect of the matter to see whether the correct court-fee has been paid. For this purpose, the present clause is absolutely necessary."

The amendment moved by hon. Member Sri S. Panchaksharam was, by leave, withdrawn.

MR. SPEAKER :—" I shall now put hon. Member Sri Narayana Kurup's amendment to the vote of the House. The question is—

' In sub-clause (2), *omit* the words " and for the avoidance of doubt . . . by the court on the same question." ' "

The amendment was put and lost.

MR. SPEAKER :—" I shall now put the other amendment of the same hon. Member to the vote of the House. The question is—

' After sub-clause (2), *insert* the following proviso :—

" Provided that the issue once raised and decided by the court shall not be reopened in the same suit." ' "

The amendment was put and lost.

MR. SPEAKER :—" I shall now put the amendment moved by hon. Member Sri V. R. Krishna Ayyar to the vote of the House. The question is—

' For the words " and for the avoidance of doubt . . . on the same question " occurring in sub-clause (2), *substitute* the following :—

" but it shall not be lawful for the court to review an earlier decision given by the court on the same question after giving notice to the State Government as provided in section 20." ' "

The amendment was put and lost.

Clause 18 was put and carried.

Clause 19 was put and carried.

[30th March 1955]

Clause 20.

* SRI S. PANCHAKSHARAM :—“ Mr. Speaker, clauses 10 to 20—these 11 clauses—relate to the scrutiny of court-fee paid. There are several stages for the scrutiny of court-fee. In the initial stages the administrative officer raises the question of court-fee. Then, the Judge may also raise the question of court-fee and require the plaintiff to pay additional court-fee wherever he considers it necessary. In the second stage, when the defendant files a written statement, he may raise certain issues and on the basis of the facts supplied by the defendant, the court may again ask the plaintiff to pay additional court-fee. Again, when an additional party is brought into the picture, the question of court-fee will come up. Even if it has been once decided, one of the new parties may raise the question again. After hearing the preliminary points, if the court frames additional issues, the court can call upon the plaintiff even at that stage to pay a higher court-fee. When the matter is taken up in appeal, the appellate courts can also call upon the plaintiff to pay a higher court-fee. The defendant or respondent in an appeal can raise the question of court-fee in the Appellate Court also and the whole process will have to be followed again. In addition to these, there are the Court-fee Examiners. On top of all these, there is the Commissioner who may be appointed by the Court to go to the particular place and find out the value of the property. Is he expected to count the rafters, the number of bamboos, the tiles, etc., in a house and decide the market value? Anyway, he is also in the picture. Thus, it will be seen that there are about 7 or 8 stages when the question of court-fee will be raised and decided. Now, this clause 20 states that notice should be given to the State Government also. What is the necessity for giving notice to the State Government? There are the Court-fee Examiners who will be deputed by the High Court. They are going to examine the records and find out whether the correct court-fee has been paid. The Court-fee Examiners are very thorough with the case law. They can be safely entrusted with the task of finding out whether the correct court-fee has been paid or not. They will be able to cite decisions in respect of all matters. Even when they feel that the correct court-fee has been paid, they can cite decisions and give their reasons. Similarly, when they feel that the correct court-fee has not been paid, they can cite decisions and give their reasons for coming to the conclusion that the correct court-fee has not been paid. When it is found out by them that the correct court-fee has not been paid, the Court may call upon the plaintiff to pay the correct court-fee. This being the case, where is the necessity for giving notice to the State Counsel? This means more expenditure for the State. Sir, I am of the view that this clause is quite unnecessary and may be dropped. If it is with reference to further proceedings, I can understand such a provision. When the question as to whether the correct court-fee has been paid or not was likely to be considered in 7 or 8 stages,

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I do not think this clause is necessary. When the State Counsel is asked to represent the Government, and supposing his view is not upheld by the Court what is the remedy? The matter cannot be taken up in appeal. It is a fiscal enactment. Once the decision is given the Government have no right to appeal. Where is the end to all this. I feel there is no necessity for this provision in this Bill. It is redundant. Seven or eight stages have already been provided for scrutiny of court-fee payable. The State Counsel may want time and also further time to argue his point whether the fee paid is proper or not. There is not going to be any finality in this matter. The plaintiff who goes to Court to get relief will be confronted with the question of court-fee and jurisdiction and nothing else. Laws delays are going to be perpetuated by a provision of this type."

11
a.m.

* **SRI K. PARTHASARATHY** :—" Mr. Speaker, Sir, the hon. Member Sri Panchaksharam is not right in saying that the Government when they are given notice under Clause 20 cannot agitate against adverse decision because we find in Clause 20 when notice is given Government are treated as a party and then under clause 11 it is stated that when there is a dissatisfaction with the decision the matter can be referred to the High Court. So it is not as if when a notice is given to the State Government, it is remedyless."

THE HON. SRI C. SUBRAMANIAM :—" The point is this, Sir. It is not compulsory to give notice to Government in every case. The Court may if it considers it just or necessary to do so, give notice to the State Government. Discretion is given to the Court, in certain cases to give notice to the Government. Leave alone the points of law and other things which even other lawyers may be able to argue ably and according to their right. But on questions of fact, with reference to the value of the property, suppose, it is hotly contested by both the sides. Then obtaining Government's view in that matter would mean some official going through the report and the Collector or the Revenue official giving a report on the valuation of the property. That would be helpful for the purpose of arriving at a decision in the matter. In such cases the Court may think it would be better to hear the Government Pleader also. The ultimate decision rests with the Court whether the Government should be brought into the picture or not. Under these circumstances there is no need for the hon. Member to oppose this clause.

Clause 20 was put and carried.

[30th March 1955]

Clause 21.

MR. SPEAKER :—" The motion is—

' That clause 21 do stand part of the Bill.' "

* SRI P. S. KRISHNASWAMY AYYANGAR :—" Mr. Speaker, Sir, I move my amendment, namely :—

' Add the following proviso :—

" Provided that wherever provision has been made that fee in a suit shall be computed on the higher or the lesser of two amounts, one representing the market value or a certain proportion of the market value of property and the other being a specified fixed amount, it shall also be deemed to have been provided that if those two amounts are equal, fee shall be computed only on one of those amounts." "

The amendment was duly seconded.

SRI V. R. KRISHNA AYYAR :—" Mr. Speaker, Sir, I move my amendment, namely :—

' Add the following proviso at the end :—

" Provided that no fee shall be leviable under the provisions of this Act in the following classes of suits and appeals arising therefrom and such other classes of suits as may be prescribed :

(i) suits by an employee against an employer arising out of the terms of service or wrongful termination of service ;

(ii) suits under the Fatal Accidents Act ;

(iii) suits for maintenance by a dependant against a person bound by law to maintain such dependant." "

SRI S. RAMALINGAM :—" I second the amendment, Sir."

* SRI P. S. KRISHNASWAMY AYYANGAR :—" Mr. Speaker, Sir, by my amendment, I suggest the addition of a proviso to clause 21. In a number of clauses in this Bill provision is made that court-fee is payable at a specific rate, a fixed amount or on the market value of the property in dispute, whichever is higher. In every such case the ordinary contingency of both the amounts being equal has been forgotten. The court-fee payable may be on Rs. 400 or on the market value of the property whichever is higher. In clauses 25, 27 and 30, it is the case. Suppose the market value also happens to be Rs. 400. Then what is the amount on which court-fee has to be paid. That has not been provided for at all in the provisions of this Bill. The Bill is silent

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with regard to a contingency like that. To avoid that omission and fill up that lacuna, I have suggested the inclusion of a proviso to this clause. The proviso I have suggested reads as follows :—

‘ Provided that wherever provision has been made that fee in a suit shall be computed on the higher or the lesser of two amounts, one representing the market value or a certain proportion of the market value of property and the other being a specified fixed amount, it shall also be deemed to have been provided that if those two amounts are equal, fee shall be computed only on one of those amounts.’

This is an amendment which ought to be accepted by the Government. Otherwise there will be difficulty arising as to the court-fee which will have to be levied when both the amounts, the market value of the property as well as the amount of Rs. 400, are the same.”

* SRI V. R. KRISHNA AYYAR :—“ Mr. Speaker, Sir, the amendment I have moved is self-explanatory. I may be pardoned for putting it that way. It is only for the purpose of giving it a kind of socialistic bias to the whole measure that I have moved this amendment. That is to say wherever there are poorer classes of people, where there are persons who are really to be pitied for their destitution or for their sorrowful plight, in all such cases we should see that some kind of relief is afforded to them from the obligation to pay court-fee, because they will not be able to pay it. What they require is compassion and relief. They are the depressed classes in the matter of litigation. They must be given relief. My amendment seeks the addition of the following proviso to this clause, namely :—

‘ Provided that no fee shall be leviable under the provisions to this Act in the following classes of suits and appeals arising therefrom and such other classes of suits as may be prescribed.—

(i) suits by an employee against an employer arising out of the terms of service or wrongful termination of service ;

(ii) suits under the Fatal Accidents Act ;

(iii) suits for maintenance by a dependant against a person bound by law to maintain such dependant.’

In the case of an employee suing his employer for wrongful termination or refusal to grant bonus or other claims which ought to have been paid to him, to ask the employee to pay the court-fee will be an obstacle and an impediment which will deprive the employee getting the relief itself. Regarding fatal accidents, supposing a boy is run over by a car. The owner of the car may be a big man. The relatives of the boy may be poor and may not be able to go to Court spending large sums of money. They should be given relief. It might be said there are provisions in other Acts to grant relief to such persons. Those are hardly useful. The affected party may have a little property and so may not be able to get the benefit or relief now afforded. I say these are pre-eminently cases where we should grant relief. Then with regard to suits for maintenance, the description itself goes to show that the person concerned is dependant on the other for his very

[Sri V. R. Krishna Ayyar] [30th March 1955]

subsistence. These are fit cases where we should show concession in the matter of court-fee. I suggest that clause 21 which seeks to levy court-fees may not operate in respect of these cases and similar other cases where relief might be very necessary. My list is only illustrative and not exhaustive. I therefore say that these classes of litigants are entitled to compassion from the State and they must be granted exemption. My amendment seeks to insert a proviso to give effect to this."

* SRI N. GOPALA MENON :—" Mr. Speaker, Sir, I would strongly protest against socialistic principles being introduced in a legislation like this. Justice is blind and law must be administered equally between man and man. All these considerations of sympathy ought not to come in here. If a man is unable to pay court-fees there are provisions under which he can apply to the Court and say he is not able to pay court-fees as he has not sufficient funds and the Court in such cases will forego the fees or collect it at the end of the decree. You cannot apply and ought not to apply socialistic principles here and say that the Court should not demand a fee in such and such cases and make distinctions between one class of people and another, between persons who have money and those who do not have money. This is the thin end of the wedge which will stultify the entire edifice of our Courts and justice in this country. In the larger interests of administration of justice I would appeal to hon. Members not to introduce class interest or personal interest in things of this kind. Let us always have this motto that justice is blind and justice will be given to all whether it is the Government or the poorest of the poor in the country in an equal manner. If the parties have not got sufficient or enough funds, there are already provisions in law which enable them to apply and get relief."

11-11
a.m.

SRI M. KALYANASUNDARAM :—" கனம் சபாநாயகர் அவர்களே, இந்த மூன்று யோசனைகளைக்கொண்ட திருத்தத்தை ஆதரித்து நான் பேசுகிறேன். எனக்கு முன்பு பேசிய கனம் அங்கத்தினர் ஸ்ரீ கோபாலமேனன் அவர்கள் 'Justice is blind' என்று சொன்னார். குருட்டுத் தன்மாக நியாயம் வழங்கப்படுகிறது என்று அபிப்பிராயப்பட்டார். நியாயமானது குருட்டுத்தன்மானது அல்ல. கடந்த காலத்தில் நியாயத்தைப்பற்றி Shakespeare சொல்லியிருப்பதை அவர் கவனிக்கவில்லை. Justice should be tempered with mercy என்பதை அவருக்கு இப்பொழுது ஞாபகப்படுத்துகிறேன். நாங்கள் கேட்பதெல்லாம் ஏழை மக்களுக்கு நியாயம் வழங்க வேண்டும் என்பதுதான். தொழிலாளர்களை முதலாளிகள் அக்கிரமமாக டிஸ்ட்ரிஸ் செய்தால் அந்தத் தொழிலாளியை திரும்பவும் வேலைக்கு எடுத்துக்கொள்ளவேண்டும் என்று கோர்ட்டு உத்தரவு போட்டாலும் முதலாளிகள் அந்த உத்தரவை ஏற்றுக்கொள்வதில்லை. அதற்கு பரிகாரம் தேடிக்கொள்வதற்கு எந்த இடத்திலும் இடம் கிடையாது. கோர்ட்டுக்குப் போகலாம். சம்பள பாக்கிக்காக கோர்ட்டுக்குப் போகலாம். அப்படி போகும் காலத்தில் கோர்ட்டும், வக்கீலும் அவர்களுடைய பணத்தை எடுத்துக்கொள்வதாக இருக்கிறது. அதற்கு முடிவு இல்லாமல் இருக்கிறது. (கனம் ஸ்ரீ சி. சுப்ரமணியம் : ட்ரேட் யூனியனும் பணத்தை கொஞ்சம் எடுத்துக்கொள்ளுகிறது என்பதை ஞாபகப்படுத்த விரும்புகிறேன்.) ட்ரேட் யூனியனைப்பற்றி கனம் நிதி மந்திரிக்கு என்ன கருத்து இருக்கிறது என்பது நன்றாகத்தெரியும். அந்த அபிப்பிராயத்தில்தான்

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ஐ.என்.டி.யு.சி. ஆரம்பித்திருக்கிறார்களோ என்னமோ? இதற்கு கனம் நிதி மந்திரி அவர்கள் கடினமாக ஆட்சேபிக்கவேண்டிய அவசியமே இல்லை. அவர் ஆத்திரத்தோடு இதை ஆட்சேபிக்கவேண்டிய அவசியமும் இல்லை. அதற்குக் காரணம் என்ன என்றும் தெரியவில்லை. ஆனால் தொழிலாளர்களுக்கு பாதுகாப்பு கொடுக்கவேண்டியது அவர்களுடைய கடமை என்று சொல்லுகிறார். சோஷலிஸ சமுதாய அடிப்படையில் போவதாகவும் சொல்லிக்கொண்டிருக்கிறார்கள். அப்படியே பேசிக் கொண்டும் இருக்கிறார்கள். சோஷலிஸ சமுதாய அடிப்படையில் போவதற்கு முன்பாக தொழிலாளர்கள் தங்களுடைய நஷ்டத்திற்கு பரிகாரம் தேடிக்கொள்வதற்காக அவர்கள் கோர்ட்டுக்குப் போகக்கூடிய அளவிற்கு விடாமல் அவர்களிடமிருந்து வரி வாங்காமல் இருந்தால் நன்றாக இருக்கும் என்பதை தெரிவித்துக்கொள்கிறேன். இந்தத் திருத்தங்களின் நோக்கம் என்ன என்பதையும் கவனிக்கவேண்டும். பராமரிப்பதற்காக வியாஜ்ஜியங்கள் தொடரலாம். பெண்கள் நிராகரிக்கப்பட்டு அவர்களுக்கு வேறு வழி இல்லாமல், ஆதரவு இல்லாமல் இருந்தால் அவர்கள் வியாஜ்ஜியங்கள் தொடரலாம். அவர்களுக்கு பாதுகாப்புக் கொடுக்கவேண்டியது அவசியமாக இருக்கிறது. அவர்களை கவனிப்பது ரொம்பவும் முக்கியம். அவர்கள் கோர்ட்டுக்குப் போகும் சமயத்தில் அவர்கள் கட்டணம் கட்டக் கூடாது என்றும், அவர்கள் இலவசமாக வியாஜ்ஜியம் தொடரவேண்டும் என்றும் இருக்கவேண்டும். அதனால் இவைகளை வற்புறுத்துகிறேன். கனம் நிதி மந்திரி அவர்கள் இதற்காக உட்கார்ந்து கொண்டே ஆத்திரத்தோடு பேச வேண்டிய அவசியம் இல்லை. இந்த திருத்தங்களை நான் வற்புறுத்துகிறேன்.”

* SRI K. P. KUTTIKRISHNAN NAIR :—“ Sir, in the amendment of Sri V. R. Krishna Ayyar, I see no principles of socialism or communism. First, exemption from payment of court-fees is sought in respect of all employees. An employee who may be getting Rs. 10,000 per mensem is also sought to be included. Secondly, exemption is asked for in respect of suits under the Fatal Accidents Act. Suppose I am involved in an accident where a car runs over me. I am protected and I need not pay any court-fees even though I can afford to pay it. So also in respect of suits for maintenance by a dependant against a person bound by law to maintain such dependant exemption is sought for. This is not based on any economic or known principles of socialism or communism. At random some three exceptions are taken. The amendment has to be opposed, because it will be helping the richer classes rather than the poorer sections of the people.”

11-14
a.m.

THE HON. SRI C. SUBRAMANIAM :—“ I am sorry, Sir, Sri Gopala Menon started this trouble, taking the observations of Sri V. R. Krishna Ayyar seriously. The hon. Member Sri M. Kalyanasundaram thought that Sri V. R. Krishna Ayyar was serious and followed it up by an earnest appeal that I should accept the amendment in the name of socialism and this had again to be answered by Sri K. P. Kuttikrishnan Nair. The hon. Member Sri V. R. Krishna Ayyar never meant his remark seriously when he said that in the name of socialistic pattern of society I should accept his amendment. All this has come about because Sri Kalyanasundaram was so vehement thinking that he was protecting certain classes and incidentally said that lawyers were taking away half the fruits of the decree when the employees went to court. Naturally I had to retort and tell him that as far as the labour leaders are

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concerned, they took away most of the fruits the labourers got by way of litigation. Of course, that is quite a different matter. I can very well understand that a person should be given relief because he is economically so poor that he is unable to pay the court-fee. This is an attempt to classify certain persons and help their own clientele in the labour field. I know for what purpose the hon. Member has brought forward this amendment. Later on he can say 'We wanted to protect the interests of the labourers but the Government are against it'. No useful purpose will be served by doing such misleading propaganda. I can understand if the hon. Member pleads for all poor classes who are economically backward. But to pick up at random two or three items and plead that exemption should be granted in respect of those items irrespective of the economic status of the person concerned, is not proper. As the hon. Member Sri K. P. Kuttikrishnan Nair pointed out, even a person receiving a salary of Rs. 10,000 may file a suit against his employer and he also should be exempt from payment of court-fee. So also with reference to suits coming under the Fatal Accidents Act. A parent, who may be a multi-millionaire, may sue against another person for damages to the extent of Rs. 10 lakhs in respect of the death of his son caused in an accident. Under the socialistic pattern of society envisaged by Sri V. R. Krishna Ayyar, he should be exempted from payment of court-fee. With regard to suits for maintenance, it is not only paupers and persons who do not have anything that file such suits. Even persons who are well placed file maintenance suits because they are entitled to maintenance under the law. The hon. Member wants that nothing should be collected from such persons. I think Sri V. R. Krishna Ayyar meant it only jocularly, but his leader took it seriously and pleaded for the retention of the amendment. I am sorry I have to oppose it. This clause says how the fees has to be reckoned. How the fees has to be determined has been dealt with in Chapter III and Chapter II refers to computation of fees. For all these reasons, I strongly oppose the amendment."

* SRI V. R. KRISHNA AYYAR :—" Anyway, my friend Sri K. P. Kuttikrishnan Nair and his able leader the Hon. the Finance Minister have their own notions of socialism and socialistic pattern that we are getting unfolded every day regarding various matters. I am not surprised that they do not see any socialistic pattern of society here. The Hon. the Leader of the House does not see anything of socialism here except jocular socialism or *tamasha* socialism. But we will have *tamasha* socialism hereafter. There is no surprise about this matter. About the point I wish to drive at, if there is agreement in principle, then it is all right. My friend Sri K. P. Kuttikrishnan Nair says that there must be some economic classification. If we are to have an economic classification, then the man who is poor should be shown some kind of consideration.

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“ If that principle is agreed to, then there can be necessary changes brought about for the purpose of implementing that. The principle behind my amendment is only this. There must be economic classification of persons who are utterly unable to enforce their rights, because of poverty; such persons should not be deprived of the entry into the temple of justice. As Mr. Gopala Menon said justice must be meted out equally to all, otherwise justice would have been hardly done. (The Hon. Finance Minister : ‘ It is only a reply; you cannot make a speech.’) Well, I am just explaining. Justice should be applicable to all. All litigants including those who have not got a pie in their pockets should have access to courts for getting relief. What I have said in my amendment is not exhaustive; there may be other classes also. The Hon. Finance Minister was saying that a large number of litigants would be benefited and that the measure would help the poor. Let us take the number of cases of employees against employers arising out of the terms of service or wrongful termination of service; how many there are drawing Rs. 10,000 and how many who draw Rs. 50, Rs. 30 or Rs. 20. In respect of fatal accidents also, the Hon. Leader of the House said that even multi-millionaires may be run over by car and they may get this relief. Let us be realistic, socialistic and consider how many cases of multi-millionaires are there for loss of a finger and how many are the persons who are run over by bus. (The Hon. Finance Minister. ‘ I can give you instances.’) Yes, if we hunt after instances. But instances do not establish a theory. So also in the case of suits for maintenance by a dependant. My hon. Friend said that this is a random collection. May be so. I have made provision for other classes also. There is an economic principle behind it. 11-20 a.m.

“ I was sad to hear the Hon. Finance Minister saying that this is meant for propaganda. If he is challenging the motive, it cannot be good and proper. Apart from that there certainly is a motive in giving that colour to this, namely, somehow attack an amendment where there is considerable substance and when it cannot be argued on merits. Therefore, the principle may be accepted as a beginning to afford relief to the classes of poor people. Let us make a beginning and make that beginning with the industrial classes of persons who are suffering, the destitutes who want maintenance. I do not say it is complete, but it is a beginning. Let us give relief to those downtrodden, destitute persons who are unable to go to courts as they are not rich.”

SRI M. KALYANASUNDARAM :—“ On a point of personal explanation. கனம் நிதி மந்திரி அவர்கள், சில தொழிற்சங்கத் தலைவர்களை தாக்க ஆரம்பித்துவிட்டார்கள். நேரடியாக பிரச்சினைகளுக்கு பதில் சொல்ல முடியாததால், தொழிற்சங்க தலைவர்களை தாக்க ஆரம்பித்திருக்கிறார்கள். தொழிற்சங்கத் தலைவர்களைத் தாக்குவது பற்றி நான் வருத்தப்படவில்லை. அந்த தொழிற் சங்கத் தலைவர்கள்

[Sri M. Kalyanasundaram]

[30th March 1955]

வக்கீல்கள் மாதிரி வாதாடுவதற்காக fees வாங்குவதில்லை, வக்கீல்களை விட, மோசமாக நடப்பதுமில்லை. நிதி மந்திரி அவர்கள் சொல்லும் ரகத்தைச் சேர்ந்த தொழிற்சங்கத் தலைவர்கள் I. N. T. U. C. ல் இருக்கலாம். அப்பேர்ப்பட்டத் தலைவர்கள் இப்போது நிதி மந்திரியின் பக்கத்தில்தான் இருக்கிறார்கள். நிதி மந்திரி சொல்வது போல் எந்த தொழிற்சங்கத் தலைவராக இருந்தாலும், அவர்களின்மேல் நடவடிக்கை எடுத்துக் கொள்ளட்டும். நான் அந்த நடவடிக்கையை வரவேற்பேன். ஆனால், இந்த திருத்தத்தின் நியாயத்தைத்தான், இப்போது பேச வேண்டுமென்று எடுத்துக்காட்ட விரும்புகிறேன்.”

* SRI P. S. KRISHNASWAMY AYYANGAR :—“ I have suggested similar amendments to every clause wherein two amounts are mentioned, and it is provided that out of two amounts which-ever is higher will be the amount taken into consideration for the purpose of levying court-fees, and that the fee is payable on the higher of the two said amounts. If this amendment is not accepted, there would be no room for moving all those amendments. I do not know whether the Government applied their mind to this amendment, before they came to the conclusion to reject it. If they had done so, I have only to thank my stars and withdraw my amendment.”

THE HON. SRI C. SUBRAMANIAM :—“ Sir, the hon. Member need not thank his star. Because, it is neither his private concern nor my private concern, it is the general concern of all. After full consideration, I thought it was quite unnecessary and it does not also fit in here. With regard to Mr. Krishna Ayyar's amendment, if the economically poorer section should be given the advantage, that section is not the industrial sector but in the agricultural sector. It is there that people are really poor. If Mr. Krishna Ayyar is really concerned about the really poor, then the agricultural sector should come first. Whatever it is, apart from all those things, I am not able to accept these amendments.”

* SRI P. S. KRISHNASWAMY AYYANGAR :—“ A point of clarification, Sir. When the two amounts are equal, what is the position? ”

MR. SPEAKER :—“ I cannot allow the hon. Member to speak ”

* SRI P. S. KRISHNASWAMY AYYANGAR :—“ Let the Hon. Minister give me an answer, Sir. Supposing in a suit for possession of a property, the court-fee leviable is on Rs. 400 or the market value of the property. Suppose, the market value also is Rs. 400, then what is the amount which will have to be taken into consideration for levying court-fee? ”

THE HON. SRI C. SUBRAMANIAM :—“ I have examined every aspect. Let us not bring in imaginary circumstances. The provisions are quite enough and they will not create difficulties.”

The amendment of Sri P. S. Krishnaswamy Ayyangar was, by leave, withdrawn.

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MR. SPEAKER :—" The question is—

' Add the following proviso at the end :—

" Provided that no fee shall be leviable under the provisions of this Act in the following classes of suits and appeals arising therefrom and such other classes of suits as may be prescribed ;

(i) suits by an employee against an employer arising out of the terms of service or wrongful termination of service;

(ii) suits under the Fatal Accidents Act;

(iii) suits for maintenance by a dependant against a person bound by law to maintain such dependant. " " "

The amendment was put and lost.

Clause 21 was put and carried.

Clause 22.

MR. SPEAKER :—" The motion is—

' That clause 22 do stand part of the Bill.' "

SRI M. KALYANASUNDARAM :—" I move—

' Add the following proviso at the end :—

" Provided that in a suit for money by an employee from his employer, in respect of arrears of wages, any compensation, damages or any other relief accrued out of convention or contract or through an award of an Industrial Tribunal, no fee shall be levied :

Provided further that in respect of arrears of maintenance no fee shall be levied if the amount claimed is less than rupees three hundred. " " "

SRI S. RAMALINGAM :—" I second the amendment, Sir."

THE HON. SRI C. SUBRAMANIAM :—" Sir, have we not considered a similar amendment? This is already covered by Sri Krishna Ayyar's amendment."

SRI M. KALYANASUNDARAM :—" These are different, Sir. Further, I refer to arrears of wages, etc."

* SRI P. RANGASWAMY REDDIAR :—" Sir, I think this amendment is not necessary. As it is, maintenance suits are filed by poor persons and they do not pay court-fees in the first instance, but they file suits *in forma pauperis*. And ultimately if the suit is decreed, the defendant is asked to pay court-fees.

" If this amendment is allowed, I think the Government would not get any court-fees out of these suits. I do not think that the intention of the mover of this amendment could be like that. If his intention is to deprive the courts of fees in maintenance suits and other suits contemplated in the amendment, I do not think

11-30
a.m.

[Sri P. Rangaswamy Reddiar] [30th March 1955]

that it is proper. Suitable provisions are made in the Civil Procedure Code to file suits and appeals *in forma pauperis*, i.e., enabling persons who could not pay court-fees to file suits as paupers. Ultimately the recovery of the court-fees will be decided by the court."

* **SRI S. RAMALINGAM** :—"கனம் மெம்பர் கல்யாணசுந்தரம் அவர்கள் கொடுத்திருக்கும் திருத்தத்தை ஆதரிக்கிறேன். ஏனென்றால் நம் மாகாணத்தில், Shop Employees' Act என்ற சட்டம் இருக்கிறது. கடையில் வேலைசெய்யும் ஆட்களுக்கு, முதலாளி ஒரு மாத சம்பளம் கொடுக்கவில்லையானாலும், அல்லது முதலாளி திடீரென்று அந்த வேலை செய்யும் ஆளை நிறுத்தினாலும், அல்லது வேலையிலிருந்து நீக்கினாலும் லேபர் கமிஷனரிடம் அதைப்பற்றி தாவா செய்துகொள்ளலாம் அந்த சட்டப்படி. லேபர் கமிஷனர் அந்த சம்பளத்தைக் கொடுக்கவேண்டுமென்று அல்லது, திடீரென்று வேலையிலிருந்து நீக்கனதற்காக நஷ்டயீடு அந்த வேலையாளுக்கு கொடுக்கவேண்டுமென்று தீர்ப்பு செய்வார். ஆனால் அந்தத் தீர்ப்புப்படி அந்த முதலாளியிடமிருந்து பணம் வசூலிக்க, அந்த வேலையாளால் முடிவதில்லை. மறுபடியும், அந்த வேலையான், அதிகாரிகளிடம், பணம் வசூலிக்க முடியாததைப் பற்றி சொன்னால், சிவில் கோர்ட்டில் தாவா செய்து பணத்தை வசூலிக்கும்படி சொல்லுகிறார்கள். அந்த சமயத்தில் இந்த வேலையான் அதிகாரிகள் கொடுத்த தீர்ப்புப்படி பணம் வசூல் செய்ய சிவில் கோர்ட்டுக்கு போக வேண்டியதாக நிற்ப்பந்தம் ஏற்படுகிறது. அந்த வேலையான் பாப்பர் suit தான் போட வேண்டியதாக இருக்கும். ஆனால் திடீரென்று வேலையிலிருந்து நீக்கப்பட்டவுடன், அந்த வேலையான், வேறு இடத்தில் வேலை செய்து சம்பளம் வாங்கினால், அவனுக்கு பாப்பர் suit போட சட்டம் இடம் கொடுப்பதில்லை. அவன் பணம் செலவு செய்து suit போடும் நிலைமையில் இல்லாமல் ரொம்ப ஏழையாக இருக்கிறான். அதனால் தான் இந்த ஏழை வேலையாளுக்கு fees கட்டணம் இல்லாமல் அவ்விதமான suit போட அனுமதிக்கவேண்டுமென்ற நோக்கத்துடன் இந்த திருத்தம் provided that in a suit for money by an employee from his employer in respect of arrears of wages, any compensation, damages or any other relief accrued out of connection or contract, or through an award of an Industrial Tribunal, no fee shall be levied என்பதை இந்த clause-ல் சேர்க்க வேண்டுமென்று கொடுக்கப்பட்டிருக்கிறது. இதை சர்க்கார் ஒத்துக்கொள்வார்கள் என்று நம்புகிறேன்."

* **SRI K. PARTHASARATHY** :—"Mr. Speaker, Sir, the acceptance of the amendment will produce some difficulties because that will introduce a new class of defendants who will escape liability to pay court-fee and who will be a privileged class. When a suit is filed and if the suit is decreed, the court-fees is included in costs and the defendant is made liable to pay the court-fee also. If the amendment is accepted, the person who is liable to pay maintenance or the employer who is liable to pay wages will become a privileged person and he will escape the liability to pay court-fee. There is absolutely no reason why we should create a privileged class like this and why Government should forego fee. It may be there is some initial difficulty for the person seeking maintenance or a person seeking recovery of arrears of wages. I cannot accept the point mentioned by the hon. Member Sri S. Ramalingam that if a person gets Rs. 30 or Rs. 40 as salary, he will cease to be a pauper. If a person cannot afford to pay court-fee, then he is a pauper and there is enough provision in the Civil Procedure Code to provide for such cases. My submission is this amendment will not be proper because the person ultimately that is enriched will be the defendant, and not the plaintiff."

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* SRI V. R. NAGARAJAN :—“ Sir, Clause 22 of the Court Fees Act which we are now discussing is on the same level as Clause 21. The question raised by the hon. Member who moved the amendment is with reference to the person who is made to pay the court-fee. I submit that neither Clause 21 nor Clause 22 have any direct bearing on the persons who have got to pay court-fee. They indicate the basis on which court-fee has to be paid. Clause 22 provides that in a suit for money (including a suit for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically) fee shall be computed on the amount claimed. As has been pointed out rightly by various hon. Members, there is a special provision providing for poor litigants who figure in courts as plaintiffs to sue *in forma pauperis* without paying court-fees at the first instance. No doubt, if they are successful and if the suit is decreed in their favour, the defendants are made to pay the court-fees to the Government. There would be no difficulty to the plaintiffs who come forward to the court.

“ There is also another point, Sir. Supposing a plaintiff's suit fails either because it is a vexatious suit or a totally false suit, the defendant will be asked to pay the cost of the plaintiff even though he is poor. The defendant stands to benefit by the suit if it is dismissed and he gets his cost from the plaintiff. In this view, I oppose the amendment and support the retention of the clause as it is.”

SRI M. KALYANASUNDARAM :—“ Sir, நம்முடைய நாட்டிலே 11-37
தொழில் தகராறுகளைத் தீர்ப்பதற்கு ஏற்படுத்தி இருக்கக்கூடிய a.m.
சட்டங்கள் மிகக்குறைவானதாகும். இந்த சட்டங்களால், தொழிலாளர் களுக்கு போதிய பாதுகாப்பு கிடைப்பதில்லை. கிடைக்கக்கூடிய பாதுகாப்பி லும், அதனுடைய பலனை தொழிலாளர்கள் அனுபவிக்கமுடியாமல், அந்தத் தொழிலாளர் தகராறு சட்டம் அமைந்திருக்கிறது. இப்போது இந்த பிரச்சினையை பொதுவாக பார்க்கவேண்டும். அப்படிப் பார்த்தால் மந்திரி அவர்கள், இதிலே தொழிலாளருக்கு அனுசூலம் செய்ய வேண்டு மென்பதை ஒத்துக்கொள்ளுவார்கள். மந்திரி அவர்களை, தாக்குவதற்காக ஒவ்வொரு சமயத்தையும் நாங்கள் பயன்படுத்திக் கொள்வதாகவும், மந்திரி அவர்களேயே சோஷலிசத்தைப்பற்றி எடுத்துச் சொல்வதாலும் மந்திரி அவர்கள் தவறாக எண்ணிக் கொண்டு கோரப்படுகிறார்கள். என்னு டைய நோக்கமெல்லாம், இந்தப் பிரச்சினையை, விருப்பு, வெறுப்பின்றி, பார்க்கவேண்டும். அப்படிப் பார்த்தால் இன்றைக்கு Industrial Tribunal பல (awards) தீர்ப்புகள் கொடுத்திருக்கிறார்கள். அந்தத் தீர்ப்புகளை முதலாளி நிறைவேற்றுவீட்டால், சர்க்கார், தங்களுடைய ரெவின்யூ தொகைகளை வசூலிப்பதுபோல், அத்தீர்ப்பில் சொல்லப்பட்ட பணத்தை, வசூலித்துக் கொடுக்கலாமென்று சர்க்காருக்கு அதிகாரம் இருக்கிறது. அப்படி அதிகாரம் இருந்தும், சர்க்கார், அத்தீர்ப்புக்களின் படி வசூலித்துக் கொடுத்திருக்கிறார்களா? இல்லை. இந்த மூன்று வருஷ காலமாக எந்த ஒரு தீர்ப்பின்படியும் சர்க்கார் வசூலித்துக் கொடுத் ததுமில்லை. அதற்காக, எந்த முதலாளியின் மீதும் எந்தவித மான கேஸ், நடவடிக்கை எடுத்ததுமில்லை. கோர்ட் fees இல்லாமல், ஒவ்வொரு தொழிலாளியும், Industrial Tribunal தீர்ப்பின்படி பணம் வசூலிக்க கோர்ட்டில் suit போட வசதி யிருந்தால், அந்த தொழிலாளிகள், சுலபமாக அந்த பணத்தை வசூலிக்க கோர்ட்டுக்குப் போக முடியும். அதனால் முதலாளிகள், தொழிலாளருக்குச் சேர வேண்டிய பணத்தைக் கொடுக்க தீர்ப்பந்தமும் ஏற்படும், முதலாளிகளும் உடனடியாக

[Sri M. Kalyanasundaram] [30th March 1955]

தொழிலாளர்களுக்கு award-ன் படி பணம் கொடுக்கவும் முன் வருவார்கள். அதனால்தான் இந்த திருத்தத்தை கொண்டு வந்திருக்கிறேன். கனம் நிதி மந்திரியார் அவர்கள் தொழிலாளர்கள்மேல் கருணைவைத்து இதை ஏற்றுக் கொள்ள வேண்டுமென்று கேட்டுக்கொள்ளுகிறேன்.”

THE HON. SRI C. SUBRAMANIAM :—“ Sir, there is a good deal of misunderstanding in this matter. If hon. Members look into clause 2 which we have not yet considered, they will find sub-clause (2) which runs as follows :—

“Where any other law contains provisions relating to the levy of fee in respect of proceedings under such other law, the provisions of this Act, relating to the levy of fee in respect of such proceedings shall apply subject to the said provisions of such other law.”

This is a general provision regarding court-fees. If as a matter of fact under the Industrial Disputes Act or certain other Acts there should be a special provision for the levy of court-fee, it should be made in that Act. That matter should be considered by the Hon. Minister concerned. All those matters relating to labour subject or agriculture subject should be considered by the respective Ministry on their own merits. All those things should not be brought in here. Individual cases of labour dispute or cases under other special laws should not be brought in here. This is a Bill governing the general law relating to court-fees and if special concessions are to be shown in respect of special categories of persons coming under special laws, they should be considered under those laws and provision should be made. I should not be asked here to lay down the labour policy or what should be done in respect of cases under the Industrial Disputes Act. Even though there is joint responsibility we are now considering only general provisions regarding court-fees. The case may be good or may not be good. I am not prepared to go into the merits. All these cases should be dealt with as an amendment to the Industrial Disputes Act or other special laws containing provisions for the enforcement of those laws. I should not be asked to go into the merits of those individual cases and make a statement with regard to the policy of the Government when we are considering a general provision relating to court-fees. That is why I am unable to accept the amendment of the hon. Member relating to the special categories of cases.”

11-40
a.m.

MR. SPEAKER :—“ The question is—

‘ Add the following provisos at the end :—

“ Provided that in a suit for money by an employee from his employer, in respect of arrears of wages, any compensation, damages or any other relief accrued out of convention or contract or through an award of an Industrial Tribunal, no fee shall be levied.

Provided further that in respect of arrears of maintenance no fee shall be levied if the amount claimed is less than rupees three hundred.” ”

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The amendment was put and lost.

Clause 22 was put and carried.

Clause 23.

MR. SPEAKER :—" The motion is—

' That clause 23 do stand part of the Bill.' "

* SRI P. S. KRISHNASWAMY AYYANGAR :—" Sir, I move the following amendment :—

' For the existing second proviso, substitute the following :—

" Provided further that a suit for enhancement of maintenance shall be instituted in a court which will have jurisdiction to receive a suit for maintenance at the enhanced rates claimed and one for reduction of maintenance shall be instituted in a court which will have jurisdiction to receive a suit for maintenance at the rate which is sought to be reduced." "

The amendment was duly seconded.

THE HON. SRI C. SUBRAMANIAM :—" Sir, I am accepting the amendment subject to the modification that for the words ' at the rate which is sought to be reduced ' the words ' at the reduced rate ' may be substituted."

MR. SPEAKER :—" Let somebody move it as an amendment to the amendment of the hon. Member Sri Krishnaswamy Ayyangar."

SRI S. PANCHAKSHARAM :—" Sir, I move the following amendment to the amendment of the hon. Member Sri Krishnaswamy Ayyangar :—

' That for the words " at the rate which is sought to be reduced " the words " at the reduced rate " be substituted.'

The amendment was duly seconded.

* SRI P. S. KRISHNASWAMY AYYANGAR :—" Before the amendment to my amendment is accepted, I want to make a submission. Usually a suit for reduction or enhancement of maintenance is with reference to a decree that already exists. Suppose there is a decree for an annual maintenance of Rs. 5,000 and that is now sought to be reduced to Rs. 2,000. Then, the court which would have decreed an annual maintenance at the rate of Rs. 5,000 would be a Subordinate Court or a District Court. But when it is sought to be reduced to Rs. 2,000, it is the District Munsif's Court that will have jurisdiction if the amendment proposed to my amendment is accepted. But it should not be the case. That is my submission. When a Court has already decreed an annual maintenance for Rs. 5,000 and if that should be reduced to Rs. 4,000, it will be the Sub-Court alone that will have jurisdiction, of course, the same court which passed the decree previously. If it is to be

[Sri P. S. Krishnaswamy Ayyangar] [30th March 1955]

reduced to Rs. 2,000, it will be the District Munsif's Court that will have to disturb the decree of the higher court, if the amendment proposed to my amendment is accepted. There is that absurdity. Therefore it is that I say that when it is sought to be reduced, the court which will have jurisdiction to consider the reduction should be the court which would have jurisdiction with regard to the rate which is sought to be reduced. But if the Hon. Minister still thinks that there is no harm in giving jurisdiction to an inferior court to reduce a rate which is within the jurisdiction of a superior court, I have no objection."

THE HON. SRI C. SUBRAMANIAM.—“I agree there is a difficulty as pointed out by the hon. Member, Sri Krishnaswamy Ayyangar. Therefore, we have two principles to be accepted. With reference to enhancement, whichever court has got jurisdiction with regard to the enhanced rate will have the jurisdiction. If it is a case of reduction, the rate provided for already in the decree in existence will be taken to be the rate for the purpose of determining jurisdiction. Therefore, I accept the amendment of the hon. Member, Sri Krishnaswamy Ayyangar, without further amendments.”

SRI E. L. RAGHAVA MUDALIAR :—“Sir, with regard to reduction, the court which passed the original decree will have jurisdiction. With regard to enhancement, the court which will have jurisdiction at the enhanced rate will have jurisdiction.”

SRI K. PARTHASARATHY :—“There was an anomaly, in the draft provision of the Select Committee. The Hon. Minister has accepted an amendment and, therefore, there is no difficulty in regard to that.

“Regarding the wording of the proviso, I wish to make one submission. Clause 53 is the provision relating to evaluation of suits for determining jurisdiction. Sub-clause (1) of that clause reads—

‘In a suit as to whose value for the purpose of determining the jurisdiction of courts, specific provision is not otherwise made in this Act or in any other law, value for that purpose and value for the purpose of computing the fee payable under this Act shall be the same.’

Therefore, in the second proviso we have to make provision for assessing the value for determining jurisdiction. When we say that a suit has to be instituted in a particular court, we do not say what should be the value for the purpose of jurisdiction. Therefore, I suggest that the second proviso may be worded as follows :—

‘Provided further that in a suit for enhancement of maintenance the value for the purpose of jurisdiction shall be the annual maintenance at the enhanced rate and in the case of a suit for reduction of maintenance, the value for the purpose of jurisdiction shall be the annual maintenance at the rate which is sought to be reduced.’

That will read better and that will be in consonance with clause 53.”

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* SRI M. NARAYANA KURUP :—“ Sir, it seems to me that if logic were to be applied, for every case where a decree of a particular court is sought to be modified, the jurisdiction must be vested in that court. Apart from the amount sought to be reduced or enhanced, that is the general principle to be adopted. If it is a District Munsif Court's decree that has to be changed—either enhanced or reduced—it must be that court that should have jurisdiction. Suppose a decree for Rs. 3,000 is passed by a District Munsif's Court and it has to be increased by Rs. 1,000. Then, that court will have to consider a claim for Rs. 4,000. To make a change with regard to vesting of jurisdiction in courts in respect of enhancement and reduction is not logical.”

THE HON. SRI C. SUBRAMANIAM :—“ The point for consideration is this. The Munsif Court's jurisdiction is limited to Rs. 3,000. Suppose there is a maintenance decree for Rs. 3,000. Then, suppose an enhancement is asked for. If a suit at that enhanced rate had been brought for the first time, then it would be considered by a Subordinate Court and not by a Munsif's Court. Now, by asking the Munsif's Court to increase the rate already fixed, it gets a jurisdiction over and above the jurisdiction which we have already given. That ordinarily should be decided by a superior court. That is why we are making a provision that where it is a case of enhancement, that enhanced rate should be taken for the purpose of determining jurisdiction. When we say that the rate of maintenance should be taken into account for the purpose of fixing the jurisdiction, then it means that we should follow it up with consequential provisions. Now let us take the other case of reduction in maintenance. Suppose a subordinate court has fixed a certain rate and now reduction is sought for. The reduced rate comes within the jurisdiction of the munsif's court and we should not ask the munsif's court to sit in judgment over the decision of the subordinate court. It should be avoided. Therefore, Mr. Krishnaswamy Ayyangar has suggested that in case of enhancement of maintenance, the enhanced rate should be the relevant factor for consideration of the jurisdiction and in case of reduction of maintenance, the appropriate court having jurisdiction over it should deal with it. That is the principle involved in the amendment.”

11-50
a.m.

SRI M. NARAYANA KURUP :—“ I think, Sir, that position is correct.”

* SRI S. PANCHAKSHARAM :—“ Sir, I am reconsidering my view. An attempt is sought to be made to put an end to an anomaly that may come into existence, that is, a decree passed by a subordinate court may be reviewed by a munsif's court. Sir, the position is not that. The subordinate court might have decided the case on different set of facts placed before it. But circumstances alter and under a different set of circumstances and on different set of facts, the munsif's court is asked to order a

[Sri S. Panchaksharam]

[30th March 1955]

reduction of maintenance. Fresh facts are advanced and fresh judgment is given in this. The munsif's court is given jurisdiction and is clothed with power to give fresh judgment on a fresh set of facts placed before it. It is not sitting in judgment over the decision of the subordinate court at all. It is not reviewing the decision of a superior court at all. To cite an example, when a third party files an objection petition to the attachment of a property in a subordinate court, the subordinate court passes an order either allowing the claim petition or ordering the attachment to continue and allowing execution to proceed. In such circumstances, if the attaching creditor or the defeated decree-holder wants to file a suit, aggrieved by the decision of the subordinate court he can do so before a district munsif's court, if the value of the property is below three thousand rupees or the decree amount is below three thousand rupees. He can question the validity of the order passed by the subordinate court and there is no anomaly in that at all there. There are other instances also wherein the decisions of the subordinate courts are challenged before the district munsif's courts, because the district munsifs are clothed with such authority."

SRI E. L. RAGHAVA MUDALIAR :—" Sir, the amendment moved by the hon. Member, Mr. Krishnaswamy Ayyangar, is not necessary. It is not as if another set of circumstances is taken into consideration. He presumes that if the total rate of enhancement or reduction of maintenance is not taken into consideration the case will not go before the proper courts. If there is a case of maintenance fixed at 1,000 rupees which is sought to be enhanced by 2,000 rupees, then according to his amendment, it will go before a munsif's court only and not necessarily before a subordinate court. I feel that the suggestion of the hon. Member, Mr. Panchaksharam, is better. I oppose the amendment moved by Mr. Krishnaswamy Ayyangar."

THE HON. SRI C. SUBRAMANIAM :—" Sir, of course, arguments may be advanced this way and that way. I think on the whole we can accept the amendment moved by Mr. Krishnaswamy Ayyangar whereby jurisdiction can be decided with reference to the rate of maintenance that is sought to be increased or reduced. If it is sought to be reduced, the reduced sum will form the basis to determine the court that is competent to decide the question. So also, in the case of enhancement, the enhanced maintenance will be the basis on which the competent court that should hear the case will be decided. Therefore, I am inclined to accept the amendment of Mr. Krishnaswamy Ayyangar."

The amendment of Sri Panchaksharam was by leave, withdrawn.

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MR. SPEAKER :—" The question is—

' For the existing second proviso, *substitute* the following :—

" Provided further that a suit for enhancement of maintenance shall be instituted in a court which will have jurisdiction to receive a suit for maintenance at the enhanced rates claimed and one for reduction of maintenance shall be instituted in a court which will have jurisdiction to receive a suit for maintenance at the rate which is sought to be reduced." ' ' "

The amendment was put and carried.

Clause 23, as amended, was put and carried.

Clause 24.

SRI S. PANCHAKSHARAM :—" Sir, I move—

' In sub-clause (1), line 2, omit " other than documents of title ".

Omit sub-clause (2). ' ' "

The amendments were duly seconded.

SRI M. NARAYANA KURUP :—" Sir, I move—

' In sub-clause (2), item (a), add at the end, the words " which-ever is less ".

In sub-clause (2), item (b), Explanation, add at the end, the words " but does not include subsidiary documents or title deeds " ' ' "

The amendments were duly seconded.

SRI S. PANCHAKSHARAM :—" Sir, sub-clause (1) says—

' In a suit for movable property . . . fee shall be computed where the subject-matter has a market value, on such value or, where the subject-matter has no market value, on the amount at which the relief sought is valued in the plaint.'

I have no objection to this. But I want sub-clause (2) to go. It says—

' In a suit for possession of documents of title, fee shall be computed on one-fourth of the amount or market value of the property secured by the document—

(1) where the plaint alleges denial of the plaintiff's title to the money or the property secured by the document, or

(2) where an issue is framed regarding the plaintiff's title to the money or the property secured by the document :

Provided that, where the allegation in the plaint or the issue framed relates only to a portion of the amount of property, fee shall be computed on one fourth of such portion of the amount or on one-fourth of the market value of such portion of the property.'

My first objection to sub-clause (2) is because the definition of ' documents of title ' has not been given correctly. What are documents of title? It is now said—

' The expression " document of title " means a document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, in any property.'

[Sri S. Panchaksharam]

[30th March 1955]

This explanation has been borrowed from section 17 of the Registration Act. 'Movable property,' documents of title cannot be included. That fact has not been taken into consideration. In the last line of the explanation I have read, the last words are 'any property'. The expression 'any property' is one to which I am objecting to; it may mean both movable and immovable property. If documents of title relate to movable property, then this explanation is applicable because the words 'any property' includes both movable and immovable properties."

THE HON. SRI C. SUBRAMANIAM :—"We are not concerned with property as such. We are concerned with documents as such."

* SRI S. PANCHAKSHARAM :—"Let me proceed on that assumption. Suppose there is a movable property. For every movable property, other than documents of title, the valuation will be on the market value. For documents of title, what is the valuation on which you have got to pay? The computation seems to be for possession of documents of title, and fee shall be computed on one-fourth of the amount or on one-fourth of the market value secured in the document. I say, this will create endless troubles for those residing in the City of Madras. In the City of Madras, we raise loans on collateral security. A person goes to a money-lender for loan and if the creditor is willing to advance money, he takes a promissory note from the debtor. On the back of the promissory note, certain documents of title are pledged as security for the money borrowed under the promissory note. That is what is known as collateral security. Suppose I have a property worth Rs. 1,00,000 or Rs. 25,000. Suppose I want to borrow Rs. 5,000. I pledge not only my sale deed but other documents of title also under the custody of the creditor as collateral security. If on the day I discharge my debt of Rs. 5,000 and if my creditor is willing only to return the promissory note but refuses to return the documents of title which I have pledged as collateral security when I borrowed the amount of Rs. 5,000 on the promissory note, then what is the remedy for me who is the debtor? The document is worth Rs. 25,000. I have borrowed only Rs. 5,000. If the creditor acts in an arbitrary way and refuses to give me back the documents of title which I had pledged, then am I to pay a court-fee of one-fourth of Rs. 25,000 or one-fourth of the market value, which in reality would come to at least Rs. 6,000 odd, when all the same I have borrowed only Rs. 5,000 and had discharged my debt? I am sorry this possibility has not been contemplated under this clause. Therefore it is better sub-clause (2) is taken out from this clause 24 and tacked on to clause 50 which provides for all suits not otherwise provided for.

"One more point, Sir. The Collector's certificate is a valuable piece of title and it serves as a valuable document for the purposes of collateral security. Otherwise taken by itself, it is a scrap of paper.

30th March 1955] [Sri S. Panchaksharam]

If as is provided for in the present sub-clause (2) of clause 24, one-fourth of the market value of the property, that is one-fourth of Rs. 25,000 is asked to be paid as the Court-fee, then it will create endless troubles for those who have borrowed moneys on collateral security in the City of Madras."

* SRI M. NARAYANA KURUP :—" Sir, I have given two amendments. The first one is—

'In sub-clause (2), item (a) add at the end the words 'while the second states—

'In sub-clause (2) item (b) explanation, add at the end the words " but does not include subsidiary documents or title deeds " '.

Of course the hon. Member Sri Panchaksharam Chettiar has raised the point that if a property worth Rs. 10,000 is offered as a collateral security and if Rs. 1,000 is borrowed on it, then if we apply the present sub-clause (2), the concerned debtor has got to pay one-fourth of the value of the document of title, which no doubt will be causing the heaviest burden on him and which is also not just. It is not specifically stated clearly which documents of title should be reckoned in favour of the plaintiff. Therefore I have said that at the end of sub-clause (2), item (b), the words ' but does not include subsidiary documents or title deeds ' may be added. That will solve the problem. If my amendment is accepted, and suppose I have borrowed Rs. 1,000 on a document of title worth Rs. 10,000 which I have offered as collateral security, I need not pay one-fourth of Rs. 10,000, i.e., Rs. 2,500 as Court-fee. Because the meaning of the present explanation was not clear, I have given notice of my amendments. I hope they may be accepted."

* SRI V. R. NAGARAJAN :—" I submit, Sir, that sub-clause (2) of clause 24 is important. Clause 1 deals with movable properties other than documents of title. It deals with suits for recovery of movable properties *not* being documents. Cases also arise where parties go into Court for a decree for possession of certain documents of title which they have been deprived of or which had been unlawfully taken away from them. Suppose as between two parties, one party thinks that he has been deprived of his right to have a particular document, then that party necessarily goes to Court in such cases. My friend Mr. Panchaksharam says there is no necessity for sub-clause (2). But I am afraid he is not taking the correct view. Sub-clause (2) is necessary. Some members drew our attention to the value of the property comprised in the document. That does not necessarily arise here. It is not our consideration to go into the exact value of the document. They may be worth lakhs or crores of rupees. It is not on the basis of the value of that property, court-fees are going to be collected in such cases. We will have to make certain limits. The Select Committee went into this question. Therefore instead of leaving it nebulous we, in the Select Committee, thought that Rs. 400 will be a reasonable amount. Anyway, in a suit for possession of documents of title, court-fee shall be computed on one-fourth of the amount or market

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value of the property secured by the document. Again we have also stated that where the prayer is for a declaration and for possession of the property to which the declaration relates, fee will be computed on the market value of the property or on rupees four hundred, whichever is higher. So, there is the choice before the plaintiff."

THE HON. SRI C. SUBRAMANIAM:—"Mr. Speaker, with reference to the difficulties which hon. Member Sri Panchaksharam pointed out, I would like to tell him that when documents of title are given as security and then a certain amount has been borrowed and when anybody wants possession of those documents, they will not come under this provision at all. That is a transaction of mortgage by deposit of title deeds. It will not come under this provision. So, the difficulty pointed out by the hon. Member will not arise. This provision relates to cases for possession of documents of title to which a person was entitled. This has nothing to do with the property as such covered by the documents. Suppose there is a document of title relating to a certain property and it stands in the name of a particular person, but is with some other person. Leaving apart the property covered by the document as such, if the person in whose name the document of title stands, wants to take possession of it from the other person, how is the court-fee to be computed? Again, suppose I entrust some documents of title with a certain person for safe custody. If at a later date, he refuses to return those documents to me, I have the right to move the Court with a prayer that he may be asked to return those documents to me. In such cases, how the court-fee payable is to be computed? In sub-clause (2) we have made it clear how the court fee is to be computed in such cases. It is not our intention to make the value of the property covered by the document of title, as the basis. We have said in this sub-clause that 'fee shall be computed on one-fourth of the amount or market value of the property secured by the document'. Therefore, it is quite necessary to have this sub-clause. We must make the position clear here itself. It should not be left to be decided by courts later on.

"Sir, as for Sri Narayana Kurup's amendment for the addition of the words 'whichever is less', it will not be correct to accept the amendment. Because, a document of title is with reference to a certain amount alone. Suppose it is a mortgage for Rs. 1,000, court-fee will be computed on one-fourth of this amount. Where it relates to some property, the fee will be computed on the market value of the property secured by the document. Thus, it will be seen that one is exclusive of the other and not an alternative. They are two different categories and so the hon. Member's amendment 'whichever is less' cannot be accepted. There are certain documents of title with reference to specific amounts. For example, take a promissory note for Rs. 1,000. In such cases, fee shall be computed on one-fourth of the amount. In the case of sale deeds the fee will be computed on the market value of the property covered by the sale deeds.

30th March 1955] [Sri C. Subramaniam]

“ As for the other amendment of the hon. Member for the addition of the words ‘ but does not include subsidiary documents or title deeds ’, I am unable to accept the contention of the hon. Member. A document of title will also include ancillary documents. There is no point in excluding them.”

* SRI M. NARAYANA KURUP :—“ Suppose a person ‘ A ’ borrows a sum of Rs. 1,000 on the security of a document worth Rs. 10,000. Now, when ‘ A ’ wants to get back the document of title, according to the present provisions, there will be some difficulty.”

THE HON. SRI C. SUBRAMANIAM :—“ Sir, the Explanation to this clause states,—

‘ the expression “ document of title ” means a document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, in any property.’

This is a general Explanation. When a person goes and asks for relief, he will not ask for relief with reference to other documents. He will ask for relief with reference to the main document of title. All other ancillary or subsidiary documents follow as a matter of course. The person entitled to the document of title is entitled to it along with all other documents attached to it. There is no question of asking for possession of other documents as a separate relief. All these subsidiary documents will have to be returned along with the main document of title to which they will be attached. So, I do not think there will be any difficulty in having the provision as it is.”

* SRI M. NARAYANA KURUP :—“ Sir, I am unable to agree with the reply given by the Hon. Minister. In the case of incidental reliefs, the Hon. Minister’s contention may be all right. As explained by me previously, if the subsidiary document in respect of a particular transaction was in the possession of some other person, there will be some difficulty. This point has not been met by the Hon. Minister. That is why I say that in respect of the subsidiary documents or title deeds the person concerned should not be asked to pay additional court-fee. There may be cases where these subsidiary documents may be in the possession of some others.”

THE HON. SRI C. SUBRAMANIAM :—“ The persons concerned should have taken care to get back those documents.”

* SRI S. RAMALINGAM :—“ கனம் சபாநாயகர் அவர்களே ஒரு சின்ன சந்தேகம்

‘ In a suit for possession of documents of title, fee shall be computed on one-fourth of the amount or market value of the property secured by the document.’

என்று clause (2) (a)-வில் சொல்லப்பட்டிருக்கிறது. வெறும் கடுதாசிக்கு ஏன் சொத்தினுடைய மார்க்கெட் வால்யூவைப் பார்த்துக்கொண்டு அதில் இவ்வளவு பங்கு கோர்ட் fee கட்ட வேண்டுமென்று விதிக்க வேண்டுமென்பது தான் எனக்குத் தெரியவில்லை. குறிப்பாக ஒரு வீடு ஒரு முனிசிபாலிட்டி எரியாவுக்குள் இருந்தது என்றால் அத்துடைய

[Sri S. Ramalingam]

[30th March 1955]

மார்க்கெட் வால்யூவைக் கண்டு பிடிப்பதற்குள் பல தகராறுகள் ஏற்படும். பிறகு கமிஷன் போட்டு, அவர்கள் அதனை விசாரணை செய்து நிர்ணயிக்க வேண்டிய நிர்ப்பந்தம் வரும். அதற்காக வேண்டி ஐந்து ரூபாய், அல்லது பத்து ரூபாய் அல்லது இருபது ரூபாய் என்று மொத்தமாக fixed ஆக கட்ட வேண்டுமென்று அந்தத் தொகையை நிர்ணயித்துவிடலாம், என்பது தான் என்னுடைய யோசனை. இதை சர்க்கார் ஏற்றுக்கொள்ளும் என்றும் நான் நினைக்கிறேன்.”

THE HON. SRI C. SUBRAMANIAM :—“ Sir, this clause does not relate to mere papers. It relates to documents of title. In the case of other documents which are mere papers, they are governed by separate provisions which deal with documents which are incapable of being valued.”

12-20
p.m.

* SRI S. PANCHAKSHARAM :—“ Mr. Speaker, Sir, I have been very carefully following the reply of the Hon. Minister. He says that sub-clause (2) (a) does not apply to cases of mortgages. I agree. It is applicable only to cases where there is a rival claimant to the document of title. That I presume is the gist of his reply. But the wording in the clause is very wide. Supposing I entrust my documents of title with my friend here and leave the place for a distant place. I come back and demand the document from my friend. He refuses to hand over the document and says : ‘ No, no. No doubt you entrusted the documents to me but the documents are entitled to be possessed by your brother. He has preferred a claim to me to hand over the documents to him. Therefore you are not entitled to the document and I cannot hand them over to you.’ That is, my friend virtually denies my title to the document. Such cases also are covered by the sub-clause. It is so broad. This gives an opportunity to the defendant to enter upon his defence and say the plaintiff is not entitled to the document but a third party has a better title to the document. And therefore when an issue is framed under this clause, I have to pay one-fourth of the money secured by the document.”

* SRI K. P. KUTTIKRISHNAN NAIR :—“ Mr. Speaker, Sir, I would request the Hon. Minister to clarify this point, whether it is not better to add the word ‘ one-fourth ’ before market value in sub-clause (2) (a) of clause 24. That sub-clause reads as follows :—

‘ In a suit for possession of documents of title, fee shall be computed on one-fourth of the amount or the market value of the property secured by the document.’

Repetition of the word ‘ one-fourth ’ before the word ‘ Market value ’ would make the position clearer. Otherwise it may be construed that the full market value is contemplated under the sub-clause.”

* SRI S. RAMALINGAM :—“ ஏற்கெனவே இருந்த பில்லின் செக்ஷன்

‘ 26-ஐ. In a suit for a declaration in regard to the validity or invalidity of an adoption or the factum of an adoption, fee shall be payable at the following rates :—

(i) In a District Munsif's Court .. Rupees fifty.

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(ii) In the City Civil Court, Rupees one hundred if the market value of the property involved in or affected by the relief is Rs. 10,000 or less and Rs. 500 if it is above Rs. 10,000.

(iii) In the High Court Rupees five hundred.

என்று செலக் கமிட்டியில் மாற்றியிருக்கிறார்கள். அதைப்போலவே மார்க் கெட் வாலியூ பூராவையும் கணக்கு எடுத்துக் கொள்ளவேண்டுமென்பதற்குப் பதிலாக மொத்தமாக, முன்சீப் கோர்ட்டாக இருந்தால் ரூ. 15-ம், சப்-கோர்ட்டாக இருந்தால் ரூ. 50-ம், ஹைக்கோர்ட்டாக இருந்தால் ரூ. 100-ம் கட்ட வேண்டுமென்று ஒரு ரேட்டை நிர்ணயித்துவிடலாம் என்று நான் நினைக்கிறேன்.”

THE HON. SRI C. SUBRAMANIAM :—“ The difficulty expressed by the hon. Member Sri Kuttikrishnan Nair will not arise at all because the clause says : ‘ one-fourth of the amount or market value of the property secured by the document ’. The word ‘ one-fourth ’ governs both the amount and the market value of the property. However I have no objection to accept this verbal amendment. I move Sir, that—

‘ In sub-clause (2) (a) of clause 24 after the word “ or ” and before the word “ market ” insert the words “ of the ” ’

The sub-clause as amended would read as follows :—

‘ (2) (a) In a suit for possession of documents of title, fee shall be computed on one-fourth of the amount or of the market value of the property secured by the document.’ ”

MR. SPEAKER :—“ The question is—

‘ In sub-clause (2) (a) of clause 24 after the word “ or ” and before the word “ market ” insert the words “ of the ”.’ ”

The amendment was put and carried.

* SRI S. PANCHAKSHARAM :—“ Sir, about documents of title being entrusted for safe custody, the sub-clause is so broad, that it will cover such cases also. I do not know what the Hon. Minister has to say about this.”

* SRI M. NARAYANA KURUP :—“ Will it not be better if we put in the explanation at the end ‘ any right, title or interest, whether vested or contingent in any property in favour of the person claiming it ’. If we put that at the end, this difficulty will not arise.”

THE HON. SRI C. SUBRAMANIAM :—“ I considered that. The difficulty would be there. That document by itself may not create any interest in the person claiming because that document may stand in the name of somebody else. But a person may become entitled to the document because of later events. Therefore taking the document by itself it may not create any interest in favour of the person claiming it. If I put that here, then it would exclude all the other things, whether persons becoming entitled to it by succession or by assignment and all these things would be avoided. (An hon. Member : ‘ What about successors and assigns.’) I shall consider this again during the third reading of the Bill.”

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SRI E. L. RAGHAVA MUDALIAR :—" I would like to know whether it will not be better to make a distinction between documents standing in the name of the person who claims it or in the name of his successor and a document which stands in the name of a third person, or claims by third parties because of certain events happening afterwards. That involves some declaration. In the other cases, on the face of it he is entitled to it. A distinction can be made between these two sets of cases. In the last line of the Explanation, the wording used is 'in any property'. I would like to know whether it is the intention to include movable properties also."

THE HON. SRI C. SUBRAMANIAM :—" Sir, the hon. Member Sri Narayana Kurup's point is made explicit. If he will only read sub-clause (2) (b), he will find 'In a suit for possession of documents of title wher the plaintiff's title to the money or the property secured by the document is not denied . . .' It is, therefore, clear that it relates only to such documents. I do agree it is not quite explicit even though sub-clause (2) (b) indicates the class of documents. I shall certainly see whether the position could be improved."

The amendments of Sri Panchaksharam were, by leave of the House, withdrawn.

The amendmnts of Sri M. Narayana Kurup were, by leave of the House, withdrawn.

Clause 24, as amended, was put and carried.

Clause 25.

MR. SPEAKER :—" Motion moved—

'That clause 25 do stand part of the Bill.' "

SRI P. K. GOPALAKRISHNAN :—" I move the following amendments standing in my name, Sir :—

(118) (1) *In item (a), omit the words " or on rupees four hundred, whichever is higher "*.

(119) (2) *In item (b), omit the words " or on rupees four hundred, whichever is higher "*.

(120) (3) *In item (c), omit the words " or on rupees five hundred, whichever is higher "*.

(121) (4) *In item (d), omit the words " or on rupees four hundred, whichever is higher " . "*

The amendments were duly seconded.

SRI Y. MANJAYA SHETTY :—" I move the following amendments, namely :—

'(97) (1) *In item (a), for the words " four hundred ", substitute the words " one hundred "*.

(2) *In item (b) for the words, " four hundred ", substitute the words " one hundred " . "*

The amendments were duly seconded.

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* SRI P. S. KRISHNASWAMY AYYANGAR :—" Sir, I move the following amendments standing in my name :— 12-30 p.m.

- ' (11) In item (a), omit the words " on the market value of the property or " and the words " whichever is higher ".
- 12) Add at the end of item (a) the words " but if the market value of the property exceeds Rs. 400, fee shall be computed only on the market value ".
- (14) In item (b), omit the words " on one-half of the market value of the property or " and the words " whichever is higher ".
- (15) Add at the end of item (b) the words " but if one-half of the market value of the property exceeds rupees four hundred, fee shall be computed only on one-half of the market value of the property ".
- (16) In item (c), omit the words " on the amount at which the relief sought is valued in the plaint or " and the words " whichever is higher ".
- (17) In item (c), add at the end the words " but if the amount at which the relief sought is valued in the plaint exceeds rupees five hundred, fee shall be computed only on such amount ".
- (19) In item (d), omit the words " on the amount at which the relief sought is valued in the plaint or " and the words " whichever is higher ".
- (20) Add at the end of item (d) the words " but if the amount at which the relief sought is valued in the plaint exceeds rupees four hundred, fee shall be computed only on such amount ".

The amendments were duly seconded.

SRI S. PANCHAKSHARAM :—" Sir, I move—

- ' (218) In items (a), (b) and (d), for " four hundred ", substitute " one hundred ".

The amendment was duly seconded.

MR. SPEAKER :—" The hon. Member Sri T. C. Narayanan Nambiar is not in his place. His amendment is not moved."

SRI S. RAMALINGAM :—" Sir, I have given notice of four amendments."

MR. SPEAKER :—" Since amendments similar to the first three amendments have been moved by the hon. Member Sri P. K. Gopalakrishnan, the hon. Member can move his last amendment only."

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SRI S. RAMALINGAM :—" Sir, I move—

‘ Insert the following new item :—

“ 189) (e) Where the prayer is for a declaration relating to the status of an employee under an employer or a tenant under a landholder, the fee payable shall be rupees five.” ”

SRI M. KALYANASUNDARAM :—" Sir, I second the amendment.”

SRI S. RAMALINGAM :—" Sir, I am not moving the other amendments.”

SRI M. KALYANASUNDARAM :—" Sir, there are four amendments standing in my name. I move—

‘ (255) In item (a), for the words “ rupees four hundred ”, substitute the words “ rupees two hundred ”.

(256) In item (b), for the words “ rupees four hundred ”, substitute the words “ rupees two hundred ”.

(257) In item (c), for the words “ rupees five hundred ”, substitute the words “ rupees two hundred ”.

(258) In item (d), for the words “ rupees four hundred ”, substitute the words “ rupees two hundred ”.”

SRI S. RAMALINGAM :—" Sir, I second the amendments.”

MR. SPEAKER :—" The clause as well as the amendments are before the House for discussion.”

* SRI P. K. GOPALAKRISHNAN :—" Sir, this clause relates to declaratory suits and it will create hardship if provision is made for a minimum fee in such suits. According to this clause, a minimum court fee of Rs. 30 will have to be paid as the fees computed on a minimum of Rs. 400. There may be cases of poor tenants, vegetable gardeners, who may be disturbed of their possession by certain neighbours who are influential and rich and if the tenant wants to get a declaration that he may not be disturbed, then he will have to pay a minimum of Rs. 30 as court-fees. After the passing of the Malabar Tenancy (Amendment) Act of 1954, there have been numerous cases in Malabar where poor ulkudidars and tenants have been disturbed by the landlords. Their only remedy will be to take recourse to a court of law and if a minimum court-fee of Rs. 30 has to be paid to get an injunction and declaration, they will not be able to go to a court. Influential and rich persons can resort to unlawful methods and there won't be any check against these. So the provision for computing the relief at a minimum of rupees four hundred must be removed and the remaining portion of the clause may be allowed to remain. I hope the Government will appreciate the difficulties involved. In case the Government are unable to accept this, they may at least accept the amendment of the hon. Member Sri S. Panchaksharam fixing the minimum at which court-fee should be computed at Rs. 100 instead of Rs. 400.”

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* SRI S. PANCHAKSHARAM :—“ Sir, I wish to mention only one thing. Title suits are filed even by paying a court-fee of Re. 1-1-0, Rs. 5 and Rs. 10. Now for every title suit a minimum court-fee of Rs. 30 should be paid. I request the Hon. the Finance Minister to accept some compromise formula. It need not necessarily be Rs. 100. Some figure less than Rs. 400 may be accepted.”

* SRI P. S. KRISHNASWAMY AYYANGAR :—“ Sir, my amendments are all of the same type. If the amendments are accepted, sub-clause (a) of clause 25 would read thus: ‘ where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on rupees four hundred, but if the market value of the property exceeds Rs. 400, fee shall be computed only on the market value.’ So up to a particular stage, the fees will have to be computed on Rs. 400 whatever may be the value of the property, but when the value of the property exceeds Rs. 400, it will have to be computed only on the market value of the property. The amendments moved to the other sub-clauses also are of the same type. If the amendments to sub-clause (a) are not accepted, the other amendments also will share the same fate.”

* SRI E. T. KUNHAN :—“ മിസ്റ്റർ സ്പീക്കർ, സർ, സാധുക്കളായ കൃഷിക്കാരെയും കടിയാന്മാരെയും ബുദ്ധിമുട്ടിക്കുന്ന ഒരു വകുപ്പാണിത്. സാധാരണക്കാരടേയും കൃഷിക്കാരടേയും പ്രതിനിധികളാണ് ഈ സഭയിലുള്ളത്. എന്നാൽ കൃഷിക്കാർക്കു ഭോഷകരമായ വിധത്തിൽ കോട്ട് ഫീസ് റദ്ദ് ചെയ്ത് കൃഷിക്കാർക്കുള്ള ഒരു നിയമമാണ് ഇവിടെ കൊണ്ടുവന്നിരിക്കുന്നത്. മുമ്പ് 50 രൂപകളെയും 5 രൂപകളെയും 100 രൂപകളെയും 10 രൂപകളെയും ഉൾക്കൊള്ളുന്ന കോട്ട് ഫീസ് ഇപ്പോൾ 100 രൂപ 7½ എന്ന ഫ്ലാറ്റ് റേറ്റ് സിക്രട്ടിക്രിട്ടേഷനുകളിലും വില കണക്കാക്കുന്നത് മുമ്പു പത്തറിട്ടിയായിരുന്നതിൽ ഇന്ന് 30 ഇരട്ടിയാക്കിയിട്ടുണ്ട്. ഇത് സാധുക്കളെ സഹായിക്കാനാണോ, കൃഷിക്കാരെ സഹായിക്കാനാണോ? ഡിക്രീറ്റേഷൻ സൂട്ടുകൾക്ക് കുറഞ്ഞത് 30 രൂപകളായാണ് കോട്ട് ഫീസ് നിശ്ചയിച്ചിരിക്കുന്നത്. അഞ്ചു രൂപകളിൽനിന്നു 30 ക. ആക്കി വർദ്ധിപ്പിക്കുന്നത് പലരും അനീതിയാണ്. സാധുക്കളായ കടിയാന്മാർക്കു അതുകൊണ്ട് വളരെ വികമമുണ്ടാവും. ഉദാഹരണത്തിന്നു ഒരു ഉൾക്കടിക്കാരനെത്തന്നെ എടുക്കാം. ഉൾക്കടിക്കാരന്റെ അവകാശത്തെ വകവയ്ക്കാതെ ജന്മി കടിപൊളിച്ചെറിഞ്ഞിട്ടു ഭൂമി കൈവശപ്പെടുത്തിയെന്നു വയ്യുക. പാറ്റപ്പെട്ട ഉൾക്കടിക്കാരനു കോടതിയിൽ പോയി ഒരു ഇഞ്ചുക്ടൻ കല്പന സമ്പാദിക്കണമെങ്കിൽ 30 ക. കോട്ട് ഫീസ് കൊടുക്കേണ്ടിയിരിക്കുന്നു. ഈ 30 ക. ഉണ്ടാകാൻ ആ പാവപ്പെട്ട ഉൾക്കടിക്കാർ എവിടെ പോകും? ഇന്ന് നിലവിലിരിക്കുന്ന കുറഞ്ഞ ഫീസ് 5 ക. ആണ്. അതുതന്നെ കുറച്ചു 3 ക. ആകാൻ സാധ്യമല്ലേ എന്നാണ് ഞാൻ ചോദിക്കുന്നത് എന്തിനാണിത്? ഇന്ന് 30 ക. ആക്കിയിരിക്കുന്നതൊരു എനിക്കു മനസ്സിലാകുന്നില്ല. മഹാനാശകൂടി പറയാനാണ്. ഇഞ്ചുക്ടൻ കല്പനയ്ക്കു ഒരു കടിയാൻ അപേക്ഷിച്ചാൽ ആദ്യമായി ഫീസ് ഇടാക്കുന്നതുതന്നെ തെറ്റാണെന്നാണ് എനിക്ക് ചൂണ്ടിക്കാണിക്കുവാനുള്ളത്. സാധുക്കടിയാന്റെ പുറം ജന്മി പൊളിച്ചുകളഞ്ഞു ഭൂമി കയ്യേറിയിട്ടായിരിക്കും കടിയാൻ ഇഞ്ചുക്ടൻ കല്പനക്കു ഹരജി സമർപ്പിക്കുന്നത്. കടിയാൻ യാതൊരു തെറ്റും ചെയ്തിട്ടില്ല. അതുകൊണ്ട് ഇഞ്ചുക്ടൻ ഉത്തരവിനുള്ള ഹരജി വിചാണമെന്തെന്നു ശേഷം കുറവായി ആരോ അയാളിൽനിന്ന് ഫീസ് ഇടാക്കണമെന്നാണ് ഞാൻ പറയുന്നത്. അതുപോലെതന്നെ കയ്യേറിയ ജന്മിക്ക് ഭൂമി കൈവശം വെച്ചുകൊണ്ടിരിക്കാത്തതന്നെ വിധത്തിലുള്ള ഇഞ്ചുക്ടൻ അന്തരവുകൾ പുറപ്പെടുവിക്കാൻ പാടില്ലെന്നും വ്യവസ്ഥ ചെയ്യേണ്ടതാണ്.”

* SRI V. R. KRISHNA AYYAR :—“ I submit, Sir, that the minimum is really uncalled for. In the existing Court Fee Act, we do not have any such minimum. Since I am perfectly certain that

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the Hon. Finance Minister is sympathetic to the poorer classes, as he said that the litigants would be getting a reduction of Rs. 7-8-0 from Rs. 11-4-0, here also the minimum usually affects only the small classes of litigants. The property minimum would act to the detriment of the poorer sections of the litigants. Therefore there is no justification in levying court-fee in respect of properties which are petty or small. Then, I submit, since compromise may dominate, it may still further be reduced."

* SRI K. PARTHASARATHY :—" Sir, it is common knowledge that suits relating to immovable properties take much of the time of the courts. That is why it was thought that a minimum fee should be provided for. Anyhow, the fixation of Rs. 400 as the minimum value will result in levy of Rs. 30 as court-fee in such suits. This will be a great hardship. Therefore, it is worth considering whether it should not be reduced and I think Rs. 200 as the minimum value would be the right thing. I hope the Hon. Finance Minister would consider this aspect and the Government may accept one of the amendments on that point.

" Some hon. Members on the other side—though one member spoke in Malayalam I was able to understand him—seem to be under the impression that this provision will apply to suits between landlord and tenant. That is not the case. In respect of suits between tenants and landlords, there is a separate provision in clause 43 and that will not inflict any hardship and the tenant will get the benefit of reduction in rate in this Bill from $11\frac{1}{4}$ per cent to $7\frac{1}{2}$ per cent of *ad valorem* fee."

* SRI S. RAMALINGAM :—" கனம் சபாநாயகர் அவர்களே இந்த செக்ஷன் 25 (ஏ) பிரகாரம் டிக்ளரேஷன் ரேட் சொத்தினுடைய மார்க்கெட் வால்யூ அல்லது நானூறு ரூபாய் ஆகிய இரண்டில் எது அதிகமோ அதைக் கட்ட வேண்டுமென்று சொல்லியிருப்பதையே நீக்கிவிடவேண்டுமென்பதுதான் என் நோக்கம். குறைந்த பட்சம் 400 ரூபாய் கட்ட வேண்டுமென்று சொன்னால் பலருக்கு கஷ்டம் ஏற்படும். இதைப்பற்றித் தான் மலையாளத்தில் பேசிய அங்கத்தினரும் குறிப்பிட்டார்கள். குறிப்பாக ஒரு நிலச்சுவாந்தார் அவருடைய நிலத்தில் வேலை செய்துகொண்டிருக்கிற ஒரு தொழிலாளியை நிலத்தைவிட்டு வெளியேற்றிவிடுகிறார் என்று வைத்துக் கொள்வோம். நிலத்திலிருந்து விவசாயிகளை வெளியேற்றுவது மிகவும் சர்வசாதாரணமாக நடக்கிறது. இதற்கும் போலீஸாரும் உதவியாக இருக்கிறார்கள். இப்படி அக்கிரமமாக வெளியேற்றப்பட்ட ஒரு விவசாயி, அந்த நிலம் தன்னிடமே விவசாயம் செய்வதற்குக் கொடுக்கப்படவேண்டுமென்று அவன் 30 ரூபாய் கோர்ட்டு *fee* கட்ட வேண்டி வரும். இது நியாயம் அல்ல என்பதே என்னுடைய அபிப்பிராயம்.

"இதைப்போலவே ஒரு முதலாளி தன்னிடம் வேலை பார்த்துக் கொண்டிருந்த ஒரு தொழிலாளியை பல காரணங்களைக் காட்டி அக்கிரமமாக வேலையை விட்டு நீக்கிவிட்டார் என்றால் அந்தத் தொழிலாளி தன்னை வேலையை விட்டு நீக்கியது தப்பு என்று மனுச் செய்துகொள்ளவேண்டுமென்றால் அவரும் 30 ரூபாய் இந்தச் சட்டத்தின் பிரகாரம் கோர்ட்டு *fee* கட்ட வேண்டி வரும். இது நியாயமல்ல. ஏழைகளுக்குச் சலுகை கொடுப்பதில் தனக்கு எதுவும் ஆட்சேபனை கிடையாது என்று கனம் மந்திரி அவர்கள் சொன்னார்கள். அது உண்மையாக இருந்தால் அவர்கள் நாயினலாக ஒரு 5 ரூபாய் கட்டி மனுப்போட்டாலே போதும் என்று சர்க்கார்

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ஏற்பாடு செய்யவேண்டும். அதற்காகத்தான், நான் என்னுடைய திருத்தத்தை பிரேரேபித்திருக்கிறேன். இதை சர்க்கார் ஏற்றுக்கொள்ள வேண்டுமென்றும் கேட்டுக் கொள்கிறேன்.”

SRI T. C. NARAYANAN NAMBIAR :—“ Sir, we are dealing with legislation and the actual condition prevalent in the State has to be taken into consideration and that is my submission. It has become the practice at least in the area from where I come that landlords, evict tenants, especially the ulkudidars. On the declaration by responsible persons on the Treasury Benches and also from the report of the Agrarian Reforms Committee of the Congress Legislature Party, it is expected that land reforms are going to be enacted soon. So landlords are trying their utmost to see that these tenants are evicted. As a matter of fact, I have my own experience where a Harijan woman was evicted in Nareth village. She wanted to file a suit for declaration of her right over the property, that is, her ulkudidarship and also take an injunction and restrain the other person from entering the house. In such cases, if the market value is taken it would be a great hardship. Supposing a hut is worth Rs. 100, then the half value would be Rs. 50; the tenant may be in a position to get his or her claim established. In the same way let us suppose a tenant is cultivating horsegram. After all the crop may be worth Rs. 50 but if the minimum limit prescribed is accepted, the tenant will be in a very difficult position for want of finance to get his right established. I fear if this minimum is accepted, there will be so many trespasses of landlords and this clause will enable the landlords to trespass over the property of the poor. I request Government may kindly accept the amendment.”

SRI M. KALYANASUNDARAM :—“ கனம் சபாநாயகர் அவர்களே, இந்த குறைந்தபட்சத் தொகையை நிர்ணயித்து இருப்பதானது ஏழைகளைத்தான் பெரிதும் பாதிக்கும். இப்போது ஒரு தொழிலாளியோ அல்லது ஆபீஸ் உத்தியோகஸ்தரோ, ஒரு குமாஸ்தாவோ வேலையிலிருந்து நீக்கப்பட்டுவிட்டால், வேலையிலிருந்து நீக்கப்பட்டது தவறு என்றும் சட்ட விரோதமானது என்றும் கோர்ட்டிலிருந்து தீர்ப்பு பெறவேண்டுமென்பதற்காக வியாஜ்யம் பேசுவதற்கு 15 ரூபாய் என்று போட்டிருக்கிறது. இந்த மசோதாப்படி ரூ. 15 சட்ட வேண்டும். அதற்கு சமமாக கிட்டத்தட்ட தொகை 200 ரூபாய் ஏற்பட்டிருக்கிறது. ஆனால் இப்போது சர்க்கார் கொண்டுவந்திருக்கிறதிலே 400 ரூபாய் மதிப்பு இருக்கவேண்டும் என்பது சர்க்காரின் நோக்கமாக இருக்கிறது. அப்படியானால் கிட்டத்தட்ட இரண்டு மடங்காக உயர்த்தப்பட்டுவிக்கிறது. நான் கேட்பது 200 ரூபாய் குறைந்த பட்சம் இருக்கவேண்டும் என்பது. இந்தக் குறைந்த பட்ச தொகையை ஏற்றுக்கொள்ள வேண்டுமென்று கேட்டுக்கொள்கிறேன்.”

THE HON. SRI C. SUBRAMANIAM :—“ Sir, points were raised by Mr. Nambiar and Mr. Kunhan regarding landlords and tenants. All those cases are covered by clause 43 wherein we have made detailed provisions regarding illegal ejection, etc. But this clause is with reference to other categories. As far as this minimum value is concerned, hon. Members, specially lawyer members, would know how it is only this class of cases that involve protracted litigation and contentious litigation. If we put Re. 1 or even As. 8 or As. 4 there will be lot of cases of titles to properties and mere declarations and consequential injunction, etc. Therefore, it is necessary there

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should be a minimum fixed, especially for suits of declaratory nature. There will be anomalies and they have to be removed. That is why the Select Committee came to the conclusion that a minimum should be fixed. We thought Rs. 30 would be reasonable. But considering the fact that there has been pressure from all sides, some reduction in that I shall agree to. Instead of Rs. 400 I shall make it Rs. 300. (An hon. Member: Make it Rs. 200). No further bargaining, please. I have already agreed to Rs. 300 or the market value whichever is higher. So also in clause (b), it would be Rs. 300 instead of Rs. 400. Subject to this, I am not accepting any other amendments."

SRI T. C. NARAYANAN NAMBIAR :—" Sir, I agree that some aspects of the issues raised by some of us are covered by clause 43. With regard to prayers for injunction and restraint, just as *ulkudidar's* right, there is no special provision in clause 43. That is why we want that this amendment should be accepted."

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SRI S. RAMALINGAM :—" When a worker has been illegally dismissed by an employer and if he comes to court for an injunction of the order issued by the employer, he should pay Rs. 400. So, I want the Government to accept my amendment which seeks to fix Rs. 5 only as court-fee to enable the workers to go to court and get justice."

THE HON. SRI C. SUBRAMANIAM :—" I have already explained that this is a general provision for levy of court-fees. I think the hon. Member should address the hon. Minister for Labour to give concessions for all these classes of cases. The Industrial Disputes Act or the relevant Act should be amended for that purpose."

The amendments of the hon. Member Sri Y. Manjaya Shetty were, by leave of the House, withdrawn. (97 and 98.)

MR. SPEAKER :—" The question is—

'In item (a), omit the words "or on rupees four hundred, which is higher".' "

The amendment was put and lost. (118.)

MR. SPEAKER :—" The question is—

'In item (b), omit the words "or on rupees four hundred, whichever is higher".' "

The amendment was put and lost. (119.)

MR. SPEAKER :—" The question is—

'In item (c), omit the words "or on rupees five hundred, whichever is higher".' "

The amendment was put and lost. (120.)

MR. SPEAKER :—" The question is—

'In item (d), omit the words "or on rupees four hundred, whichever is higher".' "

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The amendment was put and lost. (121.)

The amendment of the hon. Member Sri S. Panchaksharam was, by leave of the House, withdrawn. (218.)

The amendments of hon. Member Sri Krishnasamy Ayyangar (Nos. 11, 12, 14, 15, 16, 17, 19 and 20) were, by leave of the House, withdrawn.

MR. SPEAKER :—" The question is—

' *Insert the following new item :—*

" (e) where the prayer is for a declaration relating to the status of an employee under an employer or a tenant under a landholder the fee payable shall be rupees five " . "

(No. 189) The amendment was put and lost.

MR. SPEAKER :—" The question is—

' In item (a), for the words " rupees four hundred ", substitute the words " rupees two hundred " .

In item (b), for the words " rupees four hundred ", substitute the words " rupees two hundred " .

In item (c), for the words " rupees five hundred ", substitute the words " rupees two hundred " .

In item (d), for the words " rupees four hundred ", substitute the words " rupees two hundred " . "

The amendments were put and lost. (Nos. 255, 256, 257 and 258.)

THE HON. SRI C. SUBRAMANIAM :—" I beg to move—

" In item (a), for the words " rupees four hundred ", substitute the words " rupees three hundred " .

In item (b), for the words " rupees four hundred ", substitute the words " rupees three hundred " . "

MR. SPEAKER :—" Amendments moved—

' In item (a), for the words " rupees four hundred ", substitute the words " rupees three hundred " .

In item (b), for the words " rupees four hundred ", substitute the words " rupees three hundred " . "

SRI T. C. NARAYANAN NAMBIAR :—" I am speaking on the amendment moved by the hon. Minister. I am grateful to him for accepting the contention of some of us on this side that the amount fixed is too high. May I know, Sir, why the hon. Minister has accepted Rs. 300 and not Rs. 200. I want some clarification on that, as to why he has a special aptitude for Rs. 300. There is nothing to be lost by the Government if they accept Rs. 200 as they themselves have declared that this is not a taxation measure, in spite of the fact that the Hon. Finance Minister has explicitly

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stated in his speech when he introduced the budget that this is a taxation measure. But apart from that, there is no harm if he accepts the figure that we have given. I hope the hon. Minister will enlighten us on that point."

* **SRI S. RAMALINGAM** :—"கனம் சபாநாயகர் அவர்களே சர்க்கார், items (a) and (b) ஆகிய இரண்டுக்கும் 400 ரூபாய் என்றிருக்கிறதை 300 ரூபாயாக குறைத்துக் கொள்ளக்கூடியதாயிருக்கிறது. Items (c) and (d) யில் 500, 400 என்றிருப்பதைக் குறைத்துக்கொள்ள மறுக்கிறார்கள். இதற்குக் காரணம் தெரியவில்லை. சி-யில் இருக்கிறது. (ஆங்கிலத்தில்) பாதகம் அடைந்தவர்களுக்கு பிரத்யேக உரிமை வேண்டும். 500-க்கு 35, 40 ரூபாய் 400 ரூபாய் என்றிருப்பதையும் குறைத்துக் கட்டும்படி இருக்கவேண்டுமென்று கேட்டுக் கொள்ளுகிறேன்."

* **SRI M. KALYANASUNDARAM** :—"பிரொம்பவும் முக்கியமானது. அதிலேதான் சட்ட விரோதமானது என்று தொழிலாளர்களையும், உத்தியோகஸ்தர்களையும் வேலையிலிருந்து நீக்க வேண்டியவருகிறது. இதற்கு 300 ரூபாய் என்றாவது செய்ய முடியுமா?"

THE HON. SRI C. SUBRAMANIAM :—"The main reason why I agreed to an amendment of sub-clauses (a) and (b) is these suits will relate to land and the poor agriculturists should be shown some concession. That is why I have agreed to substitute Rs. 300 in the place of Rs. 400. As far as others are concerned, they will be in a position to pay when compared to the agriculturists. That is why I am not in favour of giving any reduction in either sub-clause (c) or (d). Then, Sir, the hon. Member Sri Narayana Nambiar wanted to know why I chose the figure Rs. 300 and not Rs. 200. I do not want to show that I am resisting any attempt on the part of the hon. Members to have the figure reduced. I wanted to have a compromise, and that is why I chose the middle figure Rs. 300 between Rs. 400 and Rs. 200 as a sort of compromise."

MR. SPEAKER :—"The question is—

'In item (a), for the words "rupees four hundred", substitute the words "rupees three hundred".'

In item (b), for the words "rupees four hundred", substitute the words "rupees three hundred".'

The amendments were put and carried.

MR. SPEAKER :—"The question is—

'Clause 25 as amended do stand part of the Bill.'

Clause 25 was put and carried.

Clause 26.

MR. SPEAKER :—"The question is—

'Clause 26 do stand part of the Bill.'

SRI S. RAMALINGAM :—"Before the Select Committee stage Clause 27 originally stood as follows :—

'In a suit for a declaration in regard to the validity or invalidity or in validity of an adoption or the factum of an adoption, fee shall be computed on one-half of the market value of the property (movable and immovable) involved in, or affected by, the relief.'

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“ But at the Select Committee stage, it has been reduced at one stage and enhanced in another stage. It has been reduced to Rs. 50 in a District Munsif's Court and in the City Civil Court, Madras, or a Sub-Court or a District Court to Rs. 100 if the market value of the property involved in or affected by the relief is Rs. 10,000 or less. It has been enhanced to rupees five hundred if the market value is above Rs. 10,000.

“ 10,000 ரூபாய்க்கு மேல் இருந்தால் 500 ரூபாய் கட்டவேண்டுமென்றிருக்கிறது. ஆனால் மார்க்கட் விலைப்படி $7\frac{1}{2}$ சத விகிதம் என்றால் 5 ஆயிரத்திற்கு 375 அதிகமாகிறது. $7\frac{1}{2}$ சத விகிதம் 12 ஆயிரத்திற்குப் பார்த்தால் கூட 450 ரூபாயாகிறது. 500 ரூபாயாகவில்லை. ரேட் உயர்த்தப்பட்டிருந்தது. செலக் கமிட்டி ஸ்டேஜில் 500 ரூபாய் என்று எப்படி போடலாம்? இதற்கு கவர்னர் அவர்களுடைய உத்திரவு வாங்கியிருக்கிறார்களா என்பது தெரியவில்லை. அப்படி வாங்கவில்லையானால் அதைப்பற்றி விவாதிக்க அனுமதி கொடுக்கும்படி கேட்டுக் கொள்ளுகிறேன்.”

THE HON. SRI C. SUBRAMANIAM :—“ It has already been explained that this is not a taxation measure and this is a fee. Therefore, there is no question of the Governor's sanction arising here.”

SRI M. KALYANASUNDARAM :—“ That explanation is not correct. This is a money Bill.”

MR. SPEAKER :—“ This is not a money Bill.”

SRI S. RAMALINGAM :—“ I want to read a portion from the budget speech of the Hon. Minister Sri C. Subramaniam—

“ The new taxation measures, viz., Agricultural income-tax on plantation, betterment levy and the levy of Court fees”

MR. SPEAKER :—“ Fees is different from taxation.

“ You must make a difference between fees, cess and taxes. This is not a taxation measure. Fees is different from tax.”

* SRI M. NARAYANA KURUP :—“ When the Bill was referred to the Select Committee a question was raised as to why it was not referred to a Joint Select Committee. The Government spokesman then said that this being a Money Bill, the hon. Members of the other House could not be included in the Select Committee and that was why they were invited as *ad hoc* members of the Committee.”

THE HON. SRI C. SUBRAMANIAM :—“ That is true. I was also under the impression that this was a Money Bill. But after consulting our legal luminaries, finally it was decided that this would not come under a Money Bill and this would only be a fee.

“ I do not think the Speaker has at any time given a ruling 1 p.m. on this point.”

MR. SPEAKER :—“ I have never said that it is a Money Bill. Prof. Saligman, in his book gives the difference between tax, fee and cess.”

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* SRI M. NARAYANA KURUP :—“ The Leader of the House himself said that it was a Money Bill. Therefore, we were all under the impression that this was a Money Bill. Now that that point has been raised, we want some time to go through it.”

MR. SPEAKER :—“ The Leader of the House is not the final authority. According to the Constitution, the Speaker is the final authority on such matters.”

* SRI S. PANCHAKSHARAM :—“ Sir, I move the following amendment :—

‘ In sub-clause (1), for “ fifty ”, substitute “ twenty-five ”. ’”

The amendment was duly seconded.

SRI P. K. GOPALAKRISHNAN :—“ Sir, I move the following amendment :—

‘ (122) In item (i), for the word “ fifty ”, substitute the word “ fifteen ”. ’”

The amendment was duly seconded.

MR. SPEAKER :—“ Clause 26 as well as the amendments thereto are before the House for discussion.”

* SRI S. PANCHAKSHARAM :—“ My amendment is with reference to clause 26 (i), that is, with reference to the fee payable in a District Munsif's Court. The fee prescribed is Rs. 50. I want it to be reduced to Rs. 25. My reasoning is this. Under the existing enactment, we have to pay only Rs. 15, a fixed amount, and get a declaration regarding the status of adoption. But that amount of Rs. 100 is not sought to be raised in the case of the Sub-Court. Unless the Government contemplate to give effect to the recent Act with reference to enhancement of jurisdiction of the District Munsif's Court from Rs. 3,000 to Rs. 5,000 the enhancement of the fee to Rs. 50 is not justified. I suggest that the fee may be proportionately reduced to Rs. 25 or Rs. 30.”

* SRI P. K. GOPALAKRISHNAN :—“ Sir, this clause enhances the rate of fee for declaratory suits relating to adoption. According to Schedule II, Article 17-A (iii) of the present Act to obtain a declaration that an alleged adoption is invalid or never in fact took place or to obtain a declaration that an adoption is valid, if the plaint is presented in a District Munsif's Court, the fee payable is Rs. 15. At present, in the case of the City Civil Court also the fee payable is Rs. 15. So, it is now a case of enhancement. I hope the Government will explain why such an enhancement is made. If only a satisfactory explanation is given, we can agree to raise it to Rs. 50. Otherwise, the rate of Rs. 15 may be accepted. The rate now prescribed in the case of a City Civil Court is Rs. 100 whether the value is Rs. 3,000 and below, or Rs. 10,000 and below. Therefore, this is a very steep enhancement. It is quite unwarranted.”

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THE HON. SRI C. SUBRAMANIAM :—“ Adoption suits are always the most contentious suits. While getting a declaration, the person concerned becomes entitled to the entire property of another person. Therefore, it is necessary to fix a fairly high fee. That is why it has been fixed at Rs. 50. If the case goes to a Sub-Court, because the value of the property involved is more than Rs. 3,000, a fee of Rs. 100 is fixed up to Rs. 10,000 and Rs. 500 if it is more than Rs. 10,000. The Select Committee went into the whole matter and decided upon these rates.”

SRI S. PANCHAKSHARAM :—“ In that case, the fee in the case of a Sub-Court and City Civil Court may also be raised to Rs. 200 or Rs. 300.”

THE HON. SRI C. SUBRAMANIAM :—“ I have no objection to increase it. But even for that, there should be some amendment. Simply because it is an increase, I cannot move it as a Government amendment.”

The amendment of Sri S. Panchaksharam was, by leave, withdrawn.

The amendment of Sri P. K. Gopalakrishnan (No. 122) was put and lost.

Clause 26 was put and carried.

Clause 27.

MR. SPEAKER :—“ The motion is—

‘ That clause 27 do stand part of the Bill.’ ”

SRI P. K. GOPALAKRISHNAN :—“ Sir, I move the following amendments :—

‘ (123) In item (a), omit the words “ or on rupees four hundred, whichever is higher ”.

(124) In item (b), omit the words “ or on rupees five hundred, whichever is higher ”.

(125) In item (c), omit the words “ or on rupees four hundred, whichever is higher ”.’ ”

The amendments were duly seconded.

SRI P. S. KRISHNASWAMY AYYANGAR :—“ I am not moving my amendments.”

SRI M. NARAYANA KURUP :—“ I suggest that the amendment moved by the Government to the previous clause may be adopted here also.”

SRI E. L. RAGHAVA MUDALIAR :—“ Suits for injunction are for remedies in case some unforeseen emergencies crop up and when the right of possession is invaded unexpectedly by strangers or trespassers. In such cases it would be inadvisable to levy a right rate of fee because the party must be able to get the remedy as

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cheaply and as expeditiously as possible. That was why only a nominal fee was levied even under the old Act. As the Finance Minister has agreed to reduce the rate to Rs. 300 in clause 25, I request him to agree to reduction here also."

THE HON. SRI C. SUBRAMANIAM:—"There will be a Government amendment to reduce this also from Rs. 400 to Rs. 300."

* SRI V. R. KRISHNA AYYAR:—"I would commend to the Hon. the Finance Minister to extend that concession to cases covered by sub-clauses (b) and (c) also because usually injunction relief is what is required emergently. There are umpteen cases of injunction suits where the value of the subject-matter—not immovable property—may be petty. In such a case, if he is to pay Rs. 500, it will be a hard thing."

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THE HON. SRI C. SUBRAMANIAM:—"We have retained in clause 25 (c) the 500 rupees limit. Clause 27 (b) deals with cases similar to those dealt with in clause 25 (c) and so this limit should remain as it is. Clause 27 (c) corresponds to clause 25 (d) and so the limit of 400 rupees should remain here also. We have to be consistent and I have no objection to the limit of 300 rupees being applied to cases dealt with in clause 27 (a)."

SRI P. K. GOPALAKRISHNAN:—"Sir, as the Government have agreed to reduce the limit in sub-clause (1) to 300 rupees, I withdraw my amendments."

The amendments 123, 124 and 125 were, by leave of the House, withdrawn.

* SRI S. PANCHAKSHARAM:—"Sir, I had given notice of an amendment to omit this clause itself. I have just one argument to advance why I did so. Clause 25 deals with suits for declaration. Sub-clause (b) says:—

'Where the prayer is for a declaration and for consequential injunction and the relief sought is with reference to any immovable property, fee shall be computed on one-half of the market value of the property or on rupees four hundred, whichever is higher.'

This has been reduced to three hundred rupees now. I feel clause 27 is either overlapping or unnecessary. It says—

'In a suit for injunction (a) where the relief sought is with reference to any immovable property and (i) where the plaintiff alleges that his title to the property is denied, or (ii) where an issue is framed regarding the plaintiff's title to the property, fee shall be computed on one-half of the market value of the property or on rupees four hundred, whichever is higher.'

This limit is now sought to be reduced to 300 rupees. I submit, Sir, that in view of the present clause 25 (b), clause 27 is unnecessary because declaration and consequential injunction are things which come under clause 27 are also covered by sub-clause 25 (b). Any person who goes to a court of law and prays for an injunction with reference to an immovable property must get his title established first by a declaration before he can apply for this relief. On his prayer for declaration he does not pay any court-fee because injunction is the main relief for which court-fee is paid. The

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declaration prayer is only ancillary. But in a suit for declaration and possession, he has to pay court-fee similarly for possession. Therefore, when clause 25 (b) is going to cover all cases, including those in which the title is denied—for, unless the title is established, one cannot apply for relief—I feel clause 27 is absolutely unnecessary. Sir, here I would like to cite an example. Under section 7 (iv) (c) as it exists in the present Court Fees Act, where a person seeks to obtain a declaratory decree with consequential relief with reference to any immovable property, he can pay just half the court-fee, as calculated under section 7 (v) of the same Act. There is section 7 (iv) (d) which deals with mere injunctions. In cases where mere injunction is prayed for, section 7 (iv) (b) is not pressed into service at all, but only section 7 (iv) (c). Similarly, when clause 25 (b) deals with declaration and consequential injunction, I feel clause 27 is unnecessary. The Government may think over this matter and come to a decision."

THE HON. SRI C. SUBRAMANIAM :—" Sir, there are two things. One is declaration followed by consequential relief. This is merely for an injunction. This class of suits is very well-known, wherein the title is not denied but a certain amount of infringement of rights of enjoyment of the property is made. The injunction may be a mandatory one or other categories of injunction. But there will have to be a separate provision for the purpose of calculating the court-fee in cases in which the title to the property itself is denied."

* SRI S. PANCHAKSHARAM :—" Sir, what the Hon. the Finance Minister says is not clear to me. He says that if the title is not denied, the case comes under some other class. Suppose a man wants to escape payment of full court-fee. He can simply say : ' Declare my title and grant me injunction.' If he says that, he comes to pay only half the court-fee and he escapes the full fee."

THE HON. SRI C. SUBRAMANIAM :—" Why half? He will have to pay the full fee. I move—

' That in sub-clause (a) (ii), for the words " four hundred ", substitute " three hundred ".' "

MR. SPEAKER :—" I shall put the Government amendment to vote. The question is—

' That in sub-clause (a) (ii), in the last line, for the words " four hundred ", the words " three hundred " be substituted.' "

The amendment was put and carried.

Clause 27, as amended, was put and carried.

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Clause 28.

SRI S. PANCHAKSHARAM :—" Sir, I move—

' (221) For "*one-fifth*", substitute "*one-tenth*"; for "*two hundred*" substitute "*one hundred*" and for "*one thousand*", substitute "*five hundred*".' "

The amendment was duly seconded.

* SRI S. PANCHAKSHARAM :—" Sir, after all, in matters relating to trust property, it is only very few people, public-minded people, who come forward and make attempts to set right affairs of mismanaged trusts. In such cases, if the court-fee is going to be so prohibitive as this, I do not think any public man will come forward and waste money on litigation. In consequence, the trust will get into continued mismanagement and it will not be properly administered at all."

SRI E. L. RAGHAVA MUDALIAR :—" Sir, in such cases as the hon. Member was enumerating just now, if the fee is reduced to a ridiculously low figure, certain busy bodies who are interested in such cases will take up the work and go in for all sorts of frivolous suits. In order to avoid such a prospect, it should be enhanced. If it cannot be enhanced, let it be retained at the level at which it is now."

SRI S. PANCHAKSHARAM :—" I withdraw my amendment."

The amendment (221) was, by leave of the House, withdrawn.
Clause 28 was put and carried.

Clause 29.

SRI S. PANCHAKSHARAM :—" Sir, I move—

' (222) For "*fourth hundred*", substitute "*fifty*".' "

The amendment was duly seconded.

SRI P. K. GOPALAKRISHNAN :—" Sir, I move—

(126) Omit the words "*or on rupees four hundred, whichever is higher*".' "

The amendment was duly seconded.

* SRI P. S. KRISHNASWAMY AYYANGAR :—" Sir,
I move—

' (289) For the words "*one-half of the market value of the property.....whichever is higher*", substitute the words "*rupees two hundred, but if one-half of the market value of the property exceeds rupees two hundred, fee shall be computed on one-half of the market value of the property*".' "

(129) Re-number the existing clause as sub-clause (1) of that clause, and insert the following as sub-clause (2) :—

" (2) Where the property has no market value, the plaintiff shall, having regard to the magnitude and

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importance of the property, state in the plaint a reasonable amount as the value of the suit for jurisdictional purposes, and the court-fee in such a suit shall be paid at the following rates:—

When a plaint is presented to—

- | | |
|--|---|
| (i) A District Munsif's Court | ... Rupees fifteen. |
| (ii) The City Civil Court, Madras,
or a Sub-Court or a District
Court. | Rupees one hundred. |
| (iii) The High Court | ... Rupees one hundred
and fifty." " " |

The amendments were duly seconded.

* SRI P. K. GOPALAKRISHNAN :—" Sir, this clause covers disputes that may relate to lands in which agricultural labourers and tenants may be involved. I hope the Government will accept my amendment to remove this limit of four hundred rupees. In case they are not willing to do it, they may extend the principle they adopted with regard to one or two clauses already approved, to this clause also and make the limit Rs. 300."

* SRI M. NARAYANA KURUP :—" Sir, of course, suits referred to by the Hon. the Finance Minister a little while ago are very complicated. But the scope for suits under clause 29 is very limited. It is only with respect to possession and so, there will be no complication at all here. I would go a step further and say that the limit may be reduced to a figure lower than 300 rupees. If that is not possible, let it stand at 300 at least."

* SRI K. PARTHASARATHY :—" Sir, I would also like to suggest that the scope of suits under section 9 of the Specific Relief Act is very limited. The court goes into the question of previous possession only and the time taken by it for doing so is also short as compared with other land suits. I want the limit to be reduced further than three hundred rupees. It may be put at 200 rupees."

* SRI S. PANCHAKSHARAM :—" Sir, the scope of section 9 of the Specific Relief Act is very limited so far as such suits are concerned. The Government have provided in another place that in respect of title to the property, fee shall be computed on one-half of the market value of the property or three hundred rupees. Here it is one-half of the market value of the property or four hundred rupees. Far from being three hundred rupees it is Rs. 400, it should be 150 rupees. I hope the Government will accept it."

* SRI V. R. KRISHNA AYYAR :—" Under the present Court Fees Act also and under section 9 of the Specific Relief Act, it is only 'half', in case wherein recovery of possession is sought and where the question of title has to be gone into. Here also that principle holds good. But under clause 30 dealing with all suits, the minimum is fixed as Rs. 400. I think it should be modelled on previous lines and I do hope the Hon. Minister would extend his indulgence to have the figure reduced to Rs. 200."

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SRI E. L. RAGHAVA MUDALIAR :—“ I think the minimum should be reduced to Rs. 200. Apart from the fact that there may be an enquiry, I do not think that it is the final remedy. Further a suit can be preferred for the declaration of title. Therefore taking into consideration these facts, I think the minimum could be reduced to Rs. 200, viz., one-half of what it is now.”

THE HON. SRI C. SUBRAMANIAM :—“ I am agreeable to reduce it to Rs. 200 instead of the present Rs. 400. (Cheers.) I move—

‘ For the words “ four hundred ” in the last line of clause 29, substitute the words “ two hundred ”. ’

MR. SPEAKER :—“ Then do all the hon. Members who have given notice of amendment withdraw their amendments? ”

By permission of the House, the amendment of Sri P. K. Gopalakrishnan (126) was withdrawn.

MR. SPEAKER :—“ Is Sri P. S. Krishnaswamy Ayyangar withdrawing his amendment? ”

* SRI P. S. KRISHNASWAMY AYYANGAR :—“ I thought I would be heard and I would be allowed to speak on my amendment. Suit for possession under the Specific Relief Act may be with regard to property which has got a market value and it may also be with regard to property which cannot be estimated in terms of money, that is, whose value cannot be estimated in terms of money. Suppose a temple is trespassed upon or is taken possession of by a gang of dacoits and it has to be got back from that gang. What is the fee to be computed in respect of such recovery of a temple? The temple has no market value. Its value cannot be estimated in terms of money. In such cases notional value will be given by the plaintiff for purposes of jurisdiction. No provision has been made for such cases in the Bill. My amendment No. 29 makes a provision that in such cases, where the property has no market value, the plaintiff shall, having regard to the magnitude and importance of the property, state in the plaint a reasonable amount as the value of the suit for jurisdictional purposes, and the court-fee in such a suit shall be paid at the following rates. If the suit presented in a District Munsif's Court, the fee shall be Rs. 15; if it is presented in a Sub-Court a different sum may be fixed. No provision has been made for such classification of properties in the present Bill and my amendment makes provision for such classification of property. Therefore I request that the Government may accept my amendment.”

THE HON. SRI C. SUBRAMANIAM :—“ I do not think it is necessary to accept Sri P. S. Krishnaswamy Ayyangar's amendment. These suits relate to Specific Relief Act and as has been pointed out possession is the main thing; only the possession in

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the previous three months is taken into consideration, and then relief is given. Therefore I do not think I can accept Mr. Krishnaswamy Ayyangar's amendment."

* SRI P. S. KRISHNASWAMY AYYANGAR :—" I am referring to suits for possession. Suppose I own a private temple. Suppose some Muslims or Christians wrongfully get into the temple and refuse to move away from the temple. I have got to recover possession of the temple from them. When I file a suit, it cannot be on the basis of market value (for there is no market value for a temple) but I have to give a notional value to the property and then file the suit."

THE HON. SRI C. SUBRAMANIAM :—" Temple will come in as a trust property and clause 28 will apply in such a case. They cannot claim relief under the Specific Relief Act. That is my contention."

* SRI P. S. KRISHNASWAMY AYYANGAR :—" If the trespass is within the period of six months, no question of title arises. What is to happen when we have to fix only a notional value to the property and then file a suit? That must come in under this clause. If the Hon. Minister says that some other clause will cover it, then I shall withdraw my amendment."

With the permission of the House, the amendments of Sri P. S. Krishnaswamy Ayyangar were withdrawn.

With the permission of the House, the amendment of Sri S. Panchaksharam (222) was also withdrawn.

MR. SPEAKER :—" I will now put the Government amendment. The question is—

'That for the words "four hundred" in the last line of clause 29, *substitute* the words "two hundred".'

The motion was put and carried.

Clause 29, as amended, was put and carried.

MR. SPEAKER :—" I want to know whether we would be able to finish the Bill to-morrow."

THE HON. SRI C. SUBRAMANIAM :—" I hope it would be finished to-morrow. We will have a night-session and finish the Bill to-morrow. That was the understanding arrived at previously. In any event we shall have to finish this Bill and the two other Bills by to-morrow."

SRI M. KALYANASUNDARAM :—" Let us sit and proceed; we cannot be sure whether we will be able to finish the Bills. Let us sit and proceed."

SRI M. NARAYANA KURUP :—" We are proceeding as expeditiously as possible."

MR. SPEAKER :—" I now adjourn the House till 8-30 a.m. to-morrow."

The House then adjourned.